

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



ORIGINAL

**74-2542**

**United States Court of Appeals**  
For the Second Circuit

CHRIS-CRAFT INDUSTRIES, INC.,

*Plaintiff-Appellant-  
Cross-Appellee,*

*against*

PIPER AIRCRAFT CORPORATION, HOWARD PIPER, THOMAS F.  
PIPER, WILLIAM T. PIPER, JR., BANGOR PUNTA CORPORATION,  
NICOLAS M. SALGO, DAVID W. WALLACE and THE FIRST BOSTON  
CORPORATION,

*Defendants-Appellees-  
Cross-Appellants.*

**APPENDIX ON APPEAL FROM FINAL JUDGMENT  
OF UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK**

**VOLUME IX -- Pages 3039A to 3214A**

*Counsel of Record Are Listed on Inside of Front Cover*

PAGINATION AS IN ORIGINAL COPY

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**NOTE REGARDING THE ORGANIZATION OF  
THIS APPENDIX ON APPEAL**

In accordance with a stipulation entered into between the parties, this Appendix on Appeal is a continuation of the one submitted to the Court on the prior appeal, Docket No. 72-1064. That Appendix consists of six volumes, totaling 2,319 pages. Therefore, this Appendix begins with volume seven (VII) and page 2320A.

Copies of the prior volumes of the Appendix will be made available to the Court in connection with this appeal.

Also, for convenience, the table of contents to the prior volumes of the Appendix is reprinted herein.

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4 pgr

ROSS - cross

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## CROSS-EXAMINATION

BY MR. ARNING:

Q Mr. Ross, is the Young Presidents' League and accredited educational organization?

A Young Presidents' Organization.

Q Is it an accredited educational organization in any state?

A No. I do not believe it is accredited in any sense. No.

It is highly regarded.

Q By whom?

A By businessmen, by the people that attend, I believe.

Q Does it give extended courses, grades, certificates?

A No, it does not give grades or certificates. Each local chapter meets on a frequent basis, and then they meet on a national basis, and they exchange ideas, concepts, and they have seminars in which experts give courses.

Q How frequently are these seminars held?

A In the local chapters possibly one a month.

Q Is that what you are referring to, your activities in local chapters?

A I was talking to local and national, no.

Q How long does a seminar last?

5 pgr

Ross - cross

635

A If on a national basis we usually meet for a five-day situation where there is a seminar, one particular seminar. If we were to take acquisitions or mergers, it would be from, let us say, nine or ten o'clock in the morning every morning for five days.

Q Can you estimate approximately what percentage of your acquisitions have been on a contested basis?

A Yes. I would think that it would be the Warner Brothers acquisition; that would be on a contested basis.

Q Were you the initial offeror in that case?

A Yes.

THE COURT: Is that the only one that was contested?

THE WITNESS: To my recollection, it was the only one.

THE COURT: How many did you say you had made?

THE WITNESS: I guess between 20 or more acquisitions.

THE COURT: One out of twenty was contested?

THE WITNESS: Yes.

BY MR. ARNING:

Q That was not a situation comparable to the one we are discussing here where you came in as a potential third party late to take over the position of one of the parties?

A No.

Q I would like to get the history of your corporation straightened out a little more. You say it was originally listed as Kinney's Service Corporation?

A That's when it was founded.

Q That was in 1961?

A That's right.

Q What happened to that corporate entity next?

A We acquired many companies through the years and then --

Q I am interested in what happened to that corporate entity. I am trying to trace -- it seems rather checkered in a quick look.

A That stayed that corporate entity. It made many acquisitions, but the only reason it was -- the name changed. It is now that same corporation that existed then. It exists now but now it is called Warner Communications.

Q When did the change of name take place?

A I believe in 1970.

THE COURT: What was the business of Kinney?

THE WITNESS: At what point?

THE COURT: In the beginning.

THE WITNESS: We had a funeral business, and then we started a rent-a-car business.

7 pgr

Ross - cross

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THE COURT: The organization in 1961.

THE WITNESS: The organization -- we merged four companies together on an exchange of stock basis, and we put a funeral business in with a cleaning and maintenance -- office building cleaning and maintenance, a parking company and a rent-a-car company.

Q You stated in your direct testimony that control has value as a sort of universal truth. Would you say that acquiring control of Pennsylvania Transportation Company just before its bankruptcy had value?

A I would say that if anyone wanted control of Penn Central before the bankruptcy that they possibly saw some values that other people didn't see, and they might have gone a different route and might not have been in bankruptcy.

I can't answer that question except that way.

Q Control of anything just automatically has value in excess of its market price; is that your testimony?

A Control of the situation has value, gives you availability to move out; it becomes a liquid situation, it gives you the availability to correct any ills immediately. A control of any situation has value. Without control it could be disaster.

Q Can you suggest any standards to measure that

1 8 pgr

Ross - cross

638

2 value?

3 A I'm sorry?

4 Q Can you suggest any objective standards by which  
5 to measure that value?

6 A No. It is just -- beside the ability, as I  
7 said before, to control one's own destiny, it has a liquid  
8 value. People will buy control.

9 Q Can you tell me where, if anywhere, a company  
10 called Bell Television, Inc. fits in your corporate  
11 enterprise?

12 A Bell Television, Inc.? That might be something  
13 to do with National Kinney. As of this particular moment  
14 I am not familiar. That might have come in with the  
15 Holmes deal when National Kinney acquired Holmes Protection.  
16 National Kinney -- I'm sorry.

17 I think I should, just so we understand --  
18 National Kinney is, today, a separate publicly owned  
19 vehicle which is listed on the American Stock Exchange.

20 Q When did you acquire, if you did, an interest  
21 in National Kinney, and what was that interest?

22 A National Kinney was sold -- sold its own stock.  
23 We owned 100% of National Kinney.

24 Q From what date? I am trying to get the history.

25 A From the time we acquired the various companies.

1 9 pgr

Ross - cross

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2 In other words, what is in National Kinney is the parking  
3 business. We had that from the very beginning. What is  
4 in National Kinney <sup>is</sup> ~~in~~ the cleaning business. We had that  
5 from the very beginning. In other words, what we did,  
6 we separated the company into two aspects, one --

7 Q You are going to have to be more precise than  
8 just "the company."

9 A If I can clear it up, let's go back. --

10 Several years ago, what we did, we decided that  
11 we were in two businesses, main businesses, one being  
12 the entertainment communication business and the other  
13 being in the real estate service business.

14 Q In 1961?

15 A No. This is in 1970 or 1971.

16 Q You are getting ahead of me. Go back to 1961.

17 What was the top parent company at that time?  
18 Kinney Service Corp.?

19 A Right.

20 Q In there there are several businesses?

21 A That's right. At that time we had an exchange  
22 of stock in that company which was the funeral business,  
23 the rent-a-car business, the parking business, and the  
24 cleaning and maintenance business.

25 Q Were those businesses owned through subsidiaries

1 10 pgr

Ross - cross

640

2 or directly?

3 A We each -- Each one of those companies exchanged  
4 their stock for a company known then, or just formed to  
5 be, Kinney Service Corporation.

6 Q So that at that point in time there was a top  
7 holding company, Kinney Holding Corp., and four subsidiaries?

8 A That may not be the exact structure because some  
9 of the operations may have been up into Kinney Service.  
10 Instead of being a sub it could be a division.

11 Q Was one of those subsidiaries Kinney National  
12 or National Kinney?

13 A No.

14 Maybe I can clear this up, if I can:

15 Kinney Service was formed when four companies  
16 exchanged their stock for the stock of a company known  
17 as Kinney Service. Kinney Service, from that point on,  
18 then acquired, we acquired, many other businesses, as  
19 I listed prior. The structure remained the same. Some  
20 of the acquisitions became divisions, some became  
21 subsidiaries, until either 1970 or 1971 -- the date escapes  
22 me on that -- when we decided to split the company into  
23 two aspects, one entertainment communications and one  
24 real estate service.

25 We then took the group that was 100% owned by

2 Warner Communications at this time, because in 1970 Kinney  
3 Service changed its name to Warner Communications, nothing  
4 else happened.

5 We then, National Kinney then, sold a part of  
6 the stock to the public and went public onto its own.  
7 We remained with our pro rata percentage of stock. In  
8 other words --

9 THE COURT: Was that an underwritten issue?

10 THE WITNESS: That was.

11 THE COURT: Who was the banker?

12 THE WITNESS: The banker was Bear Sterns.

13 I hope I cleared up that point.

14 BY MR. ARNING:

15 Q Well, I think "clear" may be an exaggeration,  
16 but we know a little bit more than we did before.

17 Do you still own your interest in National Kinney  
18 Corp.?

19 A Yes, we do.

20 Q Have you committed to sell it?

21 A We have entered into a memorandum of agreement to  
22 sell.

23 Q All of it?

24 A No. We have entered into a memorandum of agreement  
25 to sell five million of six million shares.

12 pgr

Ross - cross

642

1  
2 Q Does that include the convertible preferred?

3 A That includes the convertible preferred. I am  
4 taking the convertible preferred, when I say five million  
5 of six million, as to those it is converted. We have  
6 three million of common of National Kinney. We have  
7 a million and a half convertible preferred that converts  
8 into another three million shares. When I say we will  
9 sell five million of the six million, that's the memorandum  
10 of agreement right now.

11 Q Would you agree that in making a decision whether  
12 or not to proceed with an acquisition, your own cash  
13 position might have some relevance if there is going to  
14 be a cash acquisition?

15 A Yes.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

pgbr 1

Ross-cross

t2/3 am 2 Q In fact, was it your organization's or National  
3 Kinney's organization's lack of cash the reason for the sale  
4 now of your interest in National Kinney?

5 A No, sir.

6 Q You are unwilling to put in an additional 60  
7 million cash into the Uris acquisition?

8 A No, sir. As a matter of fact, we had announced  
9 a week or two weeks ago that the banks had arranged the  
10 financing for Uris. We are in the middle of completing  
11 that agreement. It should be completed within 48, 72 hours.  
12 But that's a public announcement, sir, out there. Whether  
13 or not these shares are sold under the memorandum of  
14 agreement, the financing has been arranged for the completion  
15 of the Uris deal.

16 Q Didn't that announcement indicate that it was a  
17 standby arrangement pending your negotiations for the sale  
18 of National Kinney?

19 A 100 per cent so. The financing is arranged,  
20 if need be.

21 Q But based in part, at least, on the proposal to  
22 sell the stock?

23 A Not based in part. The proposal has nothing  
24 to do with that aspect. If we sell then the buyer will  
25 arrange all the financing, including the money to acquire

1 pgbr 2

Ross-cross

2 our stock. The financing is arranged by the banks to  
3 complete the Uris.

4 Q Wasn't there a suit brought against you to force  
5 you to buy the balance of Uris?

6 A Oh, yes.

7 Q It was after the suit was brought that you proceed-  
8 ed with these arrangements? The time was after?

9 A Our original statement --

10 Q Answer my question and then go on and explain.

11 A Repeat the question.

12 Q You only proceeded with these steps after a suit  
13 was brought to compel you to perform your obligation to  
14 acquire the remaining interest in Uris?

15 A No.

16 THE COURT: He is asking for a sequence of  
17 dates.

18 THE WITNESS: I am trying to recall the sequence.  
19 I don't know the sequence of the date of the lawsuit.  
20 That's where I am having a problem.

21 MR. LIMAN: Do you want the date of the  
22 lawsuit, Mr. Arning?

23 Q I have a page here from Moody's Industrial.  
24 Perhaps that would refresh your recollection (handing).

25 A (Pause) It doesn't have a date.

1 pgbr

Ross-cross

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2 Q If the suit was brought to ~~tell~~<sup>compell</sup> you to go ahead  
3 with the conclusion --

4 A We announced the first time we acquired we were  
5 going ahead. National Kinney announced it on the first  
6 date that it was going to complete by June 30th, 1974, the  
7 tender.

8 Q This Mr. Frankel who brought the lawsuit is not the  
9 same Mr. Frankel who was the chief executive of National  
10 Kinney?

11 A No relation.

12 Q When you made the acquisition in Uris through  
13 National Kinney you first bought a substantial block from the  
14 Uris family, I take it?

15 A National Kinney did.

16 Q At that time National Kinney undertook an obli-  
17 gation to purchase the balance at the same price, did it  
18 not?

19 A Yes.

20 Q Same or better?

21 A It undertook an obligation to purchase the  
22 balance at \$15 a share by June 30, 1974.

23 Q Was this the same price you paid to the Uris  
24 family?

25 A No. That was about 50 cents more.

pgbr

Ross-cross

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1  
2 Q In order to get the cash flow, which you indicated  
3 was one of the major benefits of control, wouldn't a  
4 corporate consolidation be necessary?

5 A A merger, yes. A merger or various means of  
6 getting the two companies together.

7 Q In other words, acquiring a simple majority would  
8 not be sufficient for that purpose or working control?

9 A A simple majority?

10 Q Yes.

11 A No. It could give you other ways of doing it.

12 You do have the ability to declare dividends in  
13 your best interest, or the ability to sell assets in a  
14 particular situation to raise capital, and you can  
15 distribute it or not distribute it, or do anything you  
16 want to.

17 Q There are some restraints on your ability to  
18 do that as against having real control of cash flow?

19 A Restraints on what?

20 Q Your ability to pay dividends as a way of  
21 obtaining cash flow.

22 A That would go to what indentures you have or  
23 anything else.

24 Q When you indicated that you had been quite ready  
25 to have taken over Chris-Craft's position, assuming either

1 pgbr

Ross-cross

2 40.5 to 30.6 or 42 to 37 in the competition with Bangor  
3 Punta, you indicated you would not touch Bangor Punta's  
4 position with a 10-foot pole.

5 If, ultimately, your goal is control of cash flow  
6 and you were going to have to merge them in to get that,  
7 why wouldn't you want to acquire both positions?

8 A If I had -- at what point?

9 Q If your goal was to obtain the cash flow, that would  
10 require you to obtain a merger or consolidation?

11 A If I may suggest, you are emphasizing, and I think  
12 that was either the third on my list of importance as far  
13 as cash flow was concerned -- that is of prime importance,  
14 but the most important thing is the management, putting in  
15 correct management, giving it direction.

16 Q Answer my question first.

17 A I'm sorry.

18 Q Then you can argue with me.

19 Assume that cash flow is your goal. That's what  
20 you want. The merger is to obtain the cash flow. Since  
21 it is necessary to get 100 per cent in order to have that  
22 cash flow, why would you say you would not touch the  
23 minority block or the trailing block with a 10-foot pole?

24 A Well, if ~~I~~ <sup>I were</sup> ~~was~~ sitting in a situation -- and  
25 maybe the best way I can answer it, and I hope I am answering

pgbr

Ross-cross

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1  
2 this right -- if I was sitting in a situation where I had  
3 42 per cent as opposed to a 37 per cent, and if the other  
4 side wanted to sell me their interest, I would seriously  
5 consider buying their interest if any cash funds were  
6 available.

7 Q You would touch it with a 10-foot pole?

8 A Only if I had the 42 first.

9 Q First or second, you are quite prepared to  
10 touch it?

11 A I'm prepared to touch it depending upon my total  
12 plans. Only if I have the 42 block first.

13 Q Would you be disposed to try to buy that one at  
14 a lower price or would you offer the same price?

15 A I think different people would do different things.  
16 I would think that if you had that lead in a contest --

17 You are assuming the contest is still going on,  
18 sir?

19 Q Whatever you assumed in giving your previous  
20 answer.

21 A I am asking this question: At the 42-37?

22 Q At 42-37 you have purchased the 42 per cent,  
23 X dollars per share.

24 A Yes.

25 Q Now you turn to the man with 37 and you say,

pgbr

ROSS-CROSS

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"I would like to buy your stock too so I can get control."

He says, "I am quite willing to sell."

Will you try to get in at a lower price, a higher price, or the same price?

A I would try to buy any share at the lowest possible price I could.

I am not so sure that it would not be better for me first to get to the 51 if I am 42-37 because then I have control, and his stock really has no value. I would probably go to the 51 --

pgbr

Ross-cross

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t2/4 am 2

THE COURT: You say the stock has no value?

THE WITNESS: Very little value. I'm sorry.

THE COURT: None or very little?

THE WITNESS: A much depreciated value.

THE COURT: That's a third version of it.

Which one do you want?

THE WITNESS: Not no value.

THE COURT: Which is it?

THE WITNESS: Much depreciated, your Honor.

BY MR. ARNING:

Q In those situations you have been through where you first bought control and then merged out, or otherwise acquired the remaining shares, did you pay them less than you paid in the first acquiring control?

A (Pause) I'm thinking through.

Q Take your time.

A I think we paid approximately the same, **WCI**  
~~WBI~~, that is.

Q When you made your initial acquisition or offer for Warner Brothers, did you have in mind any values of control there above and beyond your ability to replace 19 out of 21 executives?

A The availability of controlling the destiny of it, the availability of implementing the long-range planning,

1 pgbr

ROSS-CROSS

651

2 of laying down policy --

3 Q Among the destinies, wasn't there a substantial  
4 undervalued inventory of films that you were able to realize  
5 on --

6 A There is an undervalued library of films. I guess  
7 it is still presently in existence. However, quite the  
8 contrary is so. Upon acquiring Warner Brothers we immediately  
9 wrote off approximately 59 million of pre-tax films in-  
10 ventory.

11 Q Before making that acquisition, did you make a  
12 fairly intensive study of Warner Brothers?

13 A Yes. We did that to the best of our ability  
14 at that time because it was contested.

15 Q Have you made any comparable study of Piper  
16 Aircraft Corporation?

17 A No. No way, shape or form have I. Not the  
18 study I made on Warner Brothers.

19 Q Do you have among your companies any situation  
20 where there is a substantial minority block owned by a  
21 single entity?

22 A Not to my knowledge.

23 MR. ARNING: I have no further questions, your  
24 honor.

25

1 pgr

Ross-cross

2 CROSS EXAMINATION

3 BY MR. RYAN:

4 Q Mr. Ross, I understand your testimony to be that in  
5 your opinion<sup>as</sup> a reasonably prudent consummate deal maker you  
6 would have offered a premium over value for Chris-Craft's  
7 41 per cent block while Bangor Punta owned 31 per cent in  
8 August of 1969.

9 A If the company wanted to purchase that position,  
10 yes.

11 Q Would you please answer my question.

12 A Yes, I think I did.

13 THE COURT: Read the question.

14 (Record read.)

15 A (Continuing) Yes.

16 Q Is it also your opinion that such a reasonably  
17 prudent consummate deal maker would have offered a premium  
18 over value for Chris-Craft's approximately 42 per cent  
19 block in September of 1969 while Bangor Punta owned <sup>37</sup>~~35~~ per  
20 cent?

21 A Yes.

22 Q That's your considered opinion?

23 A Yes.

24 Q You also testified, I believe, that you were  
25 first called into this matter by the plaintiff last Friday.

pgbr

Ross-cross

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1  
2 A Yes. I believe the date is last Friday. Arthur  
3 Liman called me.

4 THE COURT: Put the date on the record.  
5 Friday will mean nothing.

6 Q Was that April 19th that you are referring to?

7 MR. LIMAN: I called him the date I received the  
8 Gant report. If it was Thursday afternoon, that's it.

9 THE COURT: We have been talking about the  
10 date, and I think it is now agreed it is April 19, 1974.

11 MR. LIMAN: It is the date their report came,  
12 either Thursday or Friday.

13 MR. RYAN: I believe the witness is on the stand.  
14 I am trying to test his recollection.

15 Q Was it last Friday, April 19th, that you were first  
16 called into this?

17 A I believe it was last Friday.

18 Q Since last Friday what analysis or examination  
19 did you perform into the financial conditions of the oper-  
20 ations of Piper preceding or subsequent to August and  
21 September of 1969?

22 A I didn't do much work on Piper.

23 Q Could you tell us what "not much work" was?

24 A I just skimmed through the registration pros-  
25 pectus. I forget. I didn't do any appreciable work on

1 pgbr

Ross-cross

2 Piper whatsoever, on the financials of Piper.

3 Q You never looked at any material regarding Pipr  
4 Aircraft Corporation?

5 A No.

6 Q You say you skimmed through a prospectus?

7 A Yes. Whatever the material was that I had  
8 in front of me, but I didn't do any work.

9 Q You made no examination?

10 A No.

11 Q Would your answer be ~~true~~ <sup>the same</sup> concerning the financial  
12 condition of Bangor Punta Corporation at that time?

13 A Yes.

14 Q Would your answer be the same concerning Chris-  
15 Craft Industries at that time?

16 A No.

17 Q What did you do concerning Chris-Craft?

18 A I looked at the balance sheet of Chris-Craft in  
19 April, May, June, July, in that area, of 1969. I studied  
20 those.

21 Q The balance sheets?

22 A And the P&Ls.

23 Q For when?

24 A April, May, June, July in the 1969 period, in the  
25 year 1969.

pgbr

Ross-cross

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Q Did you make any examination into any of the outstanding loan or note agreements which affected the capitalization of Chris-Craft at that time?

A I didn't do any extensive work. I saw the notes.

Q You saw the notes, the item on the balance sheet?

A Yes.

Q Were you told, or did you learn, that under the 5-3/4 per cent senior notes Chris-Craft was in a position where it was limited in what activities it could do in purchasing additional securities of Piper?

A No.

Q You don't know?

A No.

Q You made no inquiry?

A I don't know.

Q How long have you known Mr. Siegel?

A I guess -- I don't know -- it may go back 12 years when I met Mr. Siegel, in that area, 12 or 15 years. The reason I am trying to place it is that we happened to live in the same apartment house at one time.

Q You consider yourself a close friend of Mr. Siegel?

A No.

Q Just a mere acquaintance?

1 pgbr

Ross-cross

2 A Less than that.

3 Q Since you met him 12 or 15 years ago, did you have  
4 any business relationship or transaction with Mr. Siegel?

5 A No.

6 Q Did he have anything to do with Warner Brothers?

7 A No.

8 Q You mentioned that Bear, Stearns functioned as  
9 an underwriter or manager of one of ~~your~~ transactions; is  
10 that correct?

11 A Yes.

12 Q Does any member of Bear, Stearns sit on your  
13 board of directors?

14 A Yes. We have two investment bankers on our board.  
15 Bear, Stearns, Lazard Freres, and we also deal with many  
16 investment bankers.

17 Q Has Oppenheimer ever done any work for your  
18 company?

19 A No, Oppenheimer has not. Goldman, Sachs has;  
20 Salomon has. They are principally the ones we have done  
21 the most work with.

22 Q Who are your counsel?

23 A Paul, Weiss, Goldberg, Rifkind, Wharton &  
24 Garrison.

25 Q Let's go a little further into your testimony.

pgbr

Ross-cross

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1  
2 You said as part of your direct examination that  
3 the elements of control that you consider of great value  
4 was the selection of management, cash flow, the ability to  
5 merge, and long-term planning; is that correct? Is that an  
6 accurate recapitulation of your direct examination?

7 A I have said that management is important. I said  
8 that long-term policies are important. I said that cash  
9 flow was important. That's correct.

10 Q Have you had any expertise or experience in manage-  
11 ment of general aviation companies?

12 A No, sir.

13 Q You testified, I believe, you were aware that  
14 there was cumulative voting in the State of Pennsylvania?

15 A Yes, sir.

16 Q Do you know how many directors Bangor Punta would  
17 have been entitled to have on the board of Piper Aircraft  
18 Corporation in 1969 while it owned 37 per cent of the  
19 stock, and assume that Chris-Craft, or some third party,  
20 a consummate deal maker, bought the 50 per cent?

21 A I would think three.

22 Q As against the consummate deal maker, winner, 4?

23 A Having control.

24 Q And then there was an 8-man board. Do you know  
25 who the eighth director was at that time?

pgbr

Ross-cross

658

1  
2 A No.

3 Q Well, if I told you it was William T. Piper, Jr.,  
4 would that indicate that he had something to do with the  
5 management of the company?

6 A I would think that the company that controlled  
7 Piper would put in their own board, their own management.  
8

9 Q You can't put in your own board. They could only  
10 put in the number of directors you could elect.

11 A Yes.

12 Q So you are always going to have a minority  
13 group on the board. If you have an 8-man board there  
14 would be at least three directors as you posited, representing  
15 37 per cent interest?

16 A Yes.

17 Q Do you think that those three directors would have  
18 any influence or possibly be able to assist in the possible  
19 selection of management?

20 A If they came up with good recommendations I would  
21 assume that the majority of the board would act for the  
22 best interest of the corporation.

23 Q You with your four directors would be able to force  
24 a whole new slate of management in there over the objection  
25 of those other three directors?

A No doubt in my mind about that.

pgbr

Ross-cross

659

1  
2 Q You are certain about that?

3 A Yes.

4 Q Cash flow, I will take it second.

5 If you owned 50 per cent or 51 per cent of Piper  
6 Aircraft Corporation, would you be able to touch the cash  
7 flow of Piper?

8 A No.

9 Q You said you didn't examine into Piper's  
10 financial condition prior. Assume I told you that for  
11 three years previous to 1969 Piper had a negative cash  
12 flow. Would that influence your decision as to whether  
13 you would offer a premium for Chris-Craft's 42 per cent  
14 or 41 per cent?

15 A No. If I were interested in the company  
16 and I did a correct evaluation, I would pay for that  
17 company what I believed it to be worth, regardless of  
18 market value, and to get control of it I would pay what  
19 I would estimate that value to be -- regardless of whether  
20 it had a minus cash flow or a plus cash flow. I would  
21 evaluate what I would do with that company if it were  
22 in my hands at a future date and what I would earn in it.

23 MR. RYAN: I would ask that that question be  
24 read to the witness once again.

25 MR. LIMAN: And when the question is read

1 pybr

Ross-cross

2 I would like the answer read too.

3 THE COURT: We will do it both ways. I suppose  
4 I have to intervene between these contestants.

5 (Record read.)

6 MR. LIMAN: And now the answer, please, just  
7 the first word.

8 THE COURT: Can you answer the question briefly  
9 and then we will have your longer answer read.

10 A (Continuing) No.

11 (Record read.)

12 MR. LIMAN: The reporter can stop at the first  
13 word, your honor. He answered the question.

14 Q Mr. Ross, you also testified that in your opinion  
15 you could never sell the minority block when Bangor Punta,  
16 or some third party, received 50 per cent; is that correct?

17 A I didn't say you could never sell. I said it  
18 would be a most difficult sale.

19 Q Do you think it could have been sold in a public  
20 offering?

21 A I think you would have several problems in a  
22 public offering, severe problems.

23 Q But you are testifying as the purchaser of a  
24 100 share block and not as an investment banker.

25 A That's correct. I am testifying as a purchaser.

pgbr

Ross-cross

661

Q You testified that as far as you were concerned -- I believe you said -- it had a depreciated value?

A That's correct.

Q Wouldn't the value of the minority block depend basically, or fundamentally, on the value of the whole company?

A No, sir.

Q Let me put it this way: Supposing Piper was generating 15 million dollars, a positive cash flow, which you could put upstream into your conglomerate. Don't you think the minority block that's out here preventing you from upstreaming that money would have a value?

A Would it have a value? Yes. I said it would have a value, but I said it would have a depreciated value.

Q Depreciated over what?

A You would be at the mercy -- You have a non-liquid asset. You can't move it. It is a very difficult thing to move. It is a very difficult thing to sell.

THE COURT: He wants to know what the base is from which you depreciate; from what number or value do you depreciate?

A You would have to -- If you could find anyone to put a value on it it would be the value that someone would be willing to buy it from you for.

1 pgr

Ross - cross

662

2 Q I am talking about you, Mr. Ross, as a conglomerate.  
3 You had a subsidiary with which you could generate  
4 a \$15,000,000 cash flow if you owned 100% of it. Wouldn't  
5 the minority interest there have a greater value to you  
6 than if the cash flow was one million dollars a year?

7 A I would have to evaluate, yes. It is conceivable.  
8 Certainly, but I could dividend and go another route to  
9 get us money and the minority interest money. On a  
10 positive cash flow you have a lot of latitude.

11 Q You certainly do. It is more preferable than  
12 dividends in your type of business, isn't it?

13 A More preferable than dividends.

14 Q You don't have to pay a tax.

15 A It is 7-1/2% after tax.

16 Q So the minority does have some value?

17 A It has some value.

18 Q You say "a depreciated value." It depends on  
19 what the circumstances are at the time of the sale?

20 A No.

21 Q The purchase?

22 A No.-- once again we are in the same situation.

23 THE COURT: Doesn't it depend on the  
24 circumstances?

25 THE WITNESS: A minority interest?

2 pgr

Ross - cross

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THE COURT: Doesn't the price at which you can sell a minority interest depend upon the circumstances? Isn't that just like saying today is Thursday?

THE WITNESS: No, sir. A minority interest -- Are we comparing it --

THE COURT: We are not doing anything at all.

THE WITNESS: May I ask you a question?

THE COURT: Certainly.

THE WITNESS: Are we saying that a minority interest has a given value if someone else has control?

THE COURT: No.

THE WITNESS: Just a minority interest without any blocks around it?

THE COURT: No.

The only question is an abstract question unrelated to anything living, dead or unreal.

Doesn't the value of something depend upon the circumstances?

THE WITNESS: Yes, sir. The value of something always depends upon given circumstances.

THE COURT: That's the only question that was asked.  
BY MR. RYAN:

Q Mr. Ross, you have testified that in your opinion a premium would have been paid over value for Chris-Craft's

1 3 pgr

Ross-cross

2 42% or 41% block in August or September. What premium  
3 do you think would have been paid?

4 A I can't tell that.

5 Q You have no opinion on it?

6 A I can't tell what premium would have been paid  
7 for the 42 or the 41, whatever the case may be.

8 Q But a premium?

9 A I think it would be to the point of how badly --  
10 and we are assuming -- that third party out there wanted  
11 to buy that company and what they saw in it. They would  
12 then evaluate that premium which they would then pay to  
13 gain control of Piper. I cannot answer that.

14 Q You can't tell me the amount of the premium?  
15 Can you tell me what the value upon which such premium,  
16 if it existed, is, in your opinion?

17 A The value to gain control.

18 Q Let's see if we cannot quantify it in dollars.

19 I will take your own computation, that Chris-Craft  
20 here paid an average of \$64 a share for 41 or 42% interest  
21 in Piper. Is that the value to which you would ascribe  
22 the premium?

23 A I don't understand your question.

24 Q Would somebody pay Chris-Craft more than \$64  
25 for its 41% or 42% block?

1  
2 A Oh, yes. That's conceivable. It all depends  
3 how that third party would evaluate Piper. Different  
4 people will pay different things for control of different  
5 situations. Everyone -- it is a very subjective situation.  
6 Everyone evaluates things differently.

7 Q Let me put it to you this way:

8 Suppose Mr. Lewis, one of the senior partners  
9 of Bear Stearns, told you that his firm believed that the  
10 fair value, absent the contest for control of Piper at  
11 this period of time, market price, market value, would  
12 have been \$52 a share.

13 A Mr. Lewis would not say that to our company.

14 Q Assume that --

15 A Our internal accountants, our internal people,  
16 would evaluate the assets we are getting, the future we  
17 are getting, and we would make the decision, and it would  
18 have no relevance to the market. It could be worth 70.

19 MR. LIMAN: I don't think you heard the question.

20 Q Would you value Bear Stearns' opinion as the  
21 fair value market value of the securities?

22 A Yes.

23 Q If Bear Stearns advised you that in August and  
24 September of 1969 the fair value market value, absent the  
25 contest for control between Chris-Craft and Bangor Punta,

1 5 pgr

Ross - cross

665 A

2 would be approximately \$52 a share, would you think that  
3 that was fairly reasonable to pay?

4 A If Bear Stearns gave it I would think it is a  
5 good opinion.

6 Q How much <sup>over</sup> ~~of~~ that \$52 would you have been prepared  
7 to pay for Chris-Craft's 41% and 42% block in August of  
8 1969?

9 A That can't be answered now. You could pay 60,  
10 you could pay 70, 80, 90. Different people evaluate  
11 different situations on a different basis. You can't  
12 say that now.

13 Q I thought you testified in your opinion somebody  
14 would have paid a premium over value?

15 A I think I just mentioned figures that were  
16 premium. If they believed that they wanted the company  
17 they would have paid a premium. If they wanted the company  
18 they would have believed that 42% would have gotten the  
19 company.

20 Q You have no opinion as to what the price would  
21 be? Is that what your testimony is?

22 A No. I have no opinion.

23 Q Mr. Ross, on your direct examination you said that  
24 a pooling of interest would have a factor and that good  
25 will has to be written off.

6 pgr

Ross- cross

666

A Good will has to be written off on a non-pooling, on a purchase.

Q Was that true in 1969?

A No. You would have to carry in 1969. I think that was prior to opinion 16. However, you would have to carry the good will on your books, and depending on the nature of the good will it didn't necessarily have to be written off. Some did and some didn't, but you could carry it for as long as 40 years.

Q Until a recent change in accounting principles you didn't have to amortize good will?

A That's right.

Q At all?

A I think -- no. That's not necessarily so.

Q You could make a decision to write it off but you didn't have to amortize it?

A Depending on what you have --

Q Was it a factor in acquisitions in 1969? When you acquired a company in 1969 were you concerned with whether you may have a good will factor in your balance sheet? You as a conglomerateur?

A No.

Q Just one more point: You made also a comment that you opined that if only 90% of all of the outstanding

1 shares of Piper in this August period, September period,  
2 were tendered and Bangor Punta had 41 at that point and  
3 Chris-Craft <sup>31</sup>~~41~~, Bangor Punta couldn't get control?  
4

5 A That's correct. A mathematical impossibility.

6 Q But what would be the situation if Bangor Punta  
7 had acquired all other shares tendered? Wouldn't it have  
8 49%?

9 A Yes.

10 Q And Chris-Craft would have 41%?

11 A Right.

12 MR. RYAN: No further questions.

13 CROSS-EXAMINATION

14 BY MR. SHIMER:

15 Q Mr. Ross, you said you made a number of acquisitions  
16 in your career?

17 A Yes.

18 Q Do you usually conduct an investigation prior to  
19 making an acquisition?

20 A Yes.

21 Q Have you ever made an acquisition with knowledge  
22 of little more than what was carried in standard reference  
23 sources available in brokerage offices?

24 A No. <sup>WCI</sup>~~WBI~~ has never done that.

25 MR. SHIMER: No further questions.

8 pgr

Ross - redirect

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## REDIRECT EXAMINATION

BY MR. LIMAN:

Q Mr. Ross, you expressed some views in terms of whether you would buy as a purchaser Chris-Craft stock if it was offered in a secondary distribution, Chris-Craft's Piper stock?

A Yes.

Q Do you have responsibility for the management of a substantial portfolio?

A Yes.

Q What is Warner Brothers portfolio of marketable securities?

A Approximately \$190,000,000.

Q Secondly, you were asked how well you knew Mr. Siegal. Do you know Mr. Salgo as well as you know Mr. Siegal?

A Yes. I know Mr. Salgo as well.

Q You were then asked what the premium for a control position in Piper would be. If I were to tell you that Bangor Punta paid \$80 a share for the Cornfeld block of about 80,000 shares in May of 1969 and it picked up approximately 100,000 shares in August of 1969 at an average price of slightly below \$80 a share, would that enable you to express some view as to what you thought

1 9 pgr

Ross - redirect

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2 the premium might be?

3 A I would only assume that Bangor Punta thought  
4 it was worth that, and I have to tell, if Nick Salgo  
5 thinks it is worth it, he is one of the best I have ever  
6 seen.

7 Q You were questione he various attributes  
8 of control positions. I don't recall anybody on cross  
9 asking you about liquidity. Is that a major factor?

10 A Major, major factor.

11 Q Mr. Ross, in your National Kinney situation,  
12 if there was a shareholder who had 51%, do you think you  
13 could have sold 40% today?

14 A No. No way.

15 Q When you talked about that, the value of the  
16 minority position, <sup>at its</sup> ~~as it~~ depreciated value, what you could  
17 ultimately get would depend on the bargaining between you  
18 and whoever wanted to buy; is that correct?

19 A That's correct.

20 Q Would you say that you were in a disadvantaged  
21 bargaining position?

22 A Very much so.

23 Q Would you rather be in a control position if  
24 you wanted to sell?

25 A Of course. Control controls the ball game. The

1 10 pgr

Ross - redirect

670

2 minority is suicide.

3 Q Another thing. In going into acquisitions  
4 seeking control, is it your object to get control in order  
5 to sell?

6 A It is my object to get control in order to build  
7 the company. That's my object. I put in management, I  
8 develop the earnings, I develop the cash flow, I develop  
9 the properties for long-term growth.

10 Q Is the liquidity really the backstop in that  
11 it gives you the opportunity to sell?

12 A The liquidity then, in an exchange of plans,  
13 it is there.

14 MR. LIMAN: No further questions.

15 THE COURT: Mr. Ross, suppose I were to say to  
16 you that in the beginning of May of 1969 Bangor Punta had  
17 a 31% stock ownership position and Chris-Craft had a 33%  
18 stockholder position in Piper. Would you estimate what  
19 their respective chances were to get control?

20 THE WITNESS: No. I cannot do that.

21 THE COURT: Suppose that during the course of  
22 May of 1969 Bangor Punta had increased its position to 45%  
23 and Chris-Craft was still at 33%. Would you have committed  
24 any further resources to Chris-Craft's chances to get control?

25 THE WITNESS: No, sir.

11 pgr

671

1  
2 THE COURT: Would you have committed any further  
3 resources to that chance to get control in funny money?

4 THE WITNESS: I would not think I would have  
5 any chance of getting control <sup>with</sup> ~~of~~ any money if it was 45-33,  
6 your Honor.

7 THE COURT: So you would not be passing out  
8 any tenders or cash to try to lift yourself above 33%  
9 if somebody else was staring you in the face with 45%?

10 THE WITNESS: If someone had a bonafide 45%  
11 there is no way I would put another dime into that.  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 dhr

Ross

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THE COURT: Suppose you knew that it was 45%  
bonafide or otherwise; at 45%?

THE WITNESS: Pardon? Bonafide or otherwise?

THE COURT: Yes.

THE WITNESS: I'm not sure I understand that.

THE COURT: We will say --

THE WITNESS: If it's a 45 --

THE COURT: No, no.

-- 45 actual with a lawsuit attached to it.

THE WITNESS: I would evaluate the lawsuit.

THE COURT: You would evaluate the lawsuit?

THE WITNESS: I wouldn't personally. Excuse  
me. I'd have my counsel to do that and give me an opinion.

THE COURT: Would you, as an entrepreneur on  
that evaluation, commit money to buying more stock in order  
to get control?

THE WITNESS: I would think that I would have to  
wait for counsel's opinion on the evaluation of the lawsuit  
to make that decision. But if it was 45 bonafide, without  
any lawsuit and the other <sup>party</sup> ~~share~~ had 33, the party with 33  
should not put another dime in, in my humble opinion.

THE COURT: Either in cash or stock?

THE WITNESS: Yes, sir.

THE COURT: Or securities?

2 dhr

Ross

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1 THE WITNESS: Yes, sir.

2 THE COURT: Now, you may have already answered  
3 this question. I think that you said you did not know  
4 anything about the background or the corporate results of  
5 Chris-Craft; is that right?

6 THE WITNESS: I just studied the balance sheet  
7 on those several months and the P/L.

8 THE COURT: Do you know that Chris-Craft had been  
9 making acquisitions in the past?

10 THE WITNESS: No. I noticed from the balance  
11 sheet -- I'm sorry, I don't know how they came about. I  
12 know there were certain entries on the balance sheet where  
13 they owned --

14 THE COURT: Pieces of companies?

15 THE WITNESS: Yes, sir.

16 THE COURT: As far as you know, did Chris-Craft  
17 have any experience in long-term management in any of its  
18 acquisitions?

19 THE WITNESS: No, sir, I can't answer to their  
20 experience.

21 THE COURT: This possibly is just curiosity.  
22 You say you managed \$190,000,000 worth of portfolios?

23 THE WITNESS: Yes, sir.

24 THE COURT: What was it worth October 1, 1973?

1 THE WITNESS: October 1, 1973?

2 THE COURT: Or September or August.

3 THE WITNESS: Well, I would say that the 190 was  
4 probably down, and I'd have to guess. I can give you December.  
5 It's on the balance sheet of our annual.  
6

7 THE COURT: That is after the decline set in.  
8 I want to find out before the decline set in.

9 THE WITNESS: I'd only be guessing to sort of  
10 pick a date. I would say maybe the marketable securities  
11 in October and November of '73 -- and this would strictly  
12 be a guess -- were -- the 190 was probably down around 177  
13 or 180, but that would be a guess. 175.

14 MR. LIMAN: I am not sure. You are guessing it  
15 was 180 in October as compared to today?

16 THE WITNESS: Yes. The market -- the actual  
17 market value. 190,000,000 is the cost.

18 THE COURT: 190,000,000 is the cost?

19 THE WITNESS: Yes, sir.

20 THE COURT: Oh, I didn't understand that. I  
21 thought you told Mr. Liman that you had experience in  
22 managing a portfolio; in other words, there was \$190,000,000  
23 and I was just testing your portfolio management.

24 THE WITNESS: Well, I do. We --

25 THE COURT: How much money?

4 dhr

Ross

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1 THE WITNESS: We had a lot of money. We didn't  
2 know what to do with it and we thought the wise thing at  
3 that particular time was to make safe, secure investments,  
4 such as Telephone; and I'm embarrassed to say after the  
5 last week, such as utilities and our costs --

6 THE COURT: Are you just subject to the same  
7 ups and downs as all experienced money managers, experienced --

8 THE WITNESS: I would think so. We're dealing  
9 in -- yes.

10 THE COURT: So that --

11 THE WITNESS: Marketable securities.

12 THE COURT: So that your expressions of values  
13 and your estimates of markets are subject to the same  
14 failings that all others are subject to; isn't that so?

15 THE WITNESS: I assume that's 100% correct, although  
16 I have to say I have a little bit of pride in our group up  
17 at WCI. I think we have out-performed the market even  
18 though we're down. I think the fellows that assist me have  
19 done an excellent job in helping me keep out -- keep the  
20 losses to a minimum during this market at the bottom.

21 MR. RYAN: I just have two questions, your Honor.

22 THE COURT: Yes.

1 5 dhr

Ross - recross

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## 2 RECROSS-EXAMINATION

3 BY MR. RYAN:

4 Q Your testimony on Mr. Liman's redirect was that  
5 in your opinion, of course, Bangor Punta had paid  
6 approximately \$80 for the -- it was characterized as --  
7 Cornfeld Securities in May, and approximately \$78 a share  
8 in cash for the 100,000 shares purchased in August; that  
9 that was what you would consider to be the value of control;  
10 is that correct?

11 A That isn't what I said.

12 Q Will you please repeat what you said.

13 A I said I believe that if Bangor thought those  
14 were the values and ~~Nich~~ <sup>Nick</sup> Salgo thought those were the  
15 values -- Nick Salgo has a great reputation, and I, for one,  
16 admire and respect him, and I certainly believe he knows  
17 what he is doing in the acquisition and merger field.

18 Q Well, do you think that the arrival at that price  
19 might have been influenced by the fact that 501,000 shares  
20 of Piper Securities were purchased for a package of high  
21 leverage securities, and another 110,000 shares were  
22 acquired at the time prior to August for another package of  
23 securities?

24 A I would think that the way that -- and it's very  
25 difficult to put yourself into someone else's thinking -- I

1 6 dhr

Ross - recross

2 would think Bangor Punta and Nick Salgo, in estimating  
3 where they wanted to come out, had a total price in mind --  
4 not on a particular package, but what total control was  
5 worth -- and I think that's what they evaluated.

6 Q So the 78 or \$80 is really not significant, it  
7 is the total cost?

8 A It's the total cost I think is the key value.

9 Q Including the value of the securities being issued?

10 A Including the value of the securities being issued.

11 MR. RYAN: No further questions.

12 THE COURT: Are there any other further questions?

13 MR. ARNING: No further questions.

14 MR. SHIMER: No further questions, your Honor.

15 MR. RYAN: We won't need this witness back again.

16 THE COURT: You are not requesting a continuance?

17 MR. RYAN: Not requesting one.

18 THE COURT: Thank you, Mr. Ross. You may step  
19 down.

20 [Witness excused.]

21 MR. LIMAN: Mr. Gordon.

1 7 dhr

2 C H A R L E S L E O N A R D G O R D O N ,

3 called as a witness on behalf of the Plaintiff, being  
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LIMAN:

7 Q Mr. Gordon, you testified at the first trial?

8 A Yes, I did.

9 Q Speak up, please.

10 A Yes, I did.

11 Q I will stand back.

12 What is your present occupation?

13 A I'm a practicing lawyer, a member of the firm of  
14 Shea, Gould, Climenko & Kramer in New York.

15 Q Were you an officer of Chris-Craft Corporation  
16 in 1969?

17 A Yes, I was.

18 Q What was your position?

19 A I was vice president, general counsel, and I was  
20 a director of the company.

21 Q Did you have some responsibility in the area of  
22 finance?

23 A Yes, I did. I worked quite closely with the  
24 financial vice president.

25 Q I will show you a set of four documents that are

1 8 dhr

Gordon - direct

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2 being marked as 177 for Identification, and ask you if  
3 you can identify these.

4 [Plaintiff's Exhibit 177 marked for  
5 Identification.]

6 A Yes, these are Chris-Craft comparative consolidated  
7 balance sheets, April 30, '69 against August 31, '68; May  
8 31, '69, against August 31, '68; June 30, '69, against  
9 August 31, '68; and July 31, '69, against August 31, '68.

10 Q Were these your internal financials that were  
11 prepared in the regular course of business for Chris-Craft's  
12 officers?

13 A Yes. We would get monthly financials of balance  
14 sheets of this kind.

15 Q This is what this is; am I correct?

16 A I think so, yes.

17 Q Can you --

18 THE COURT: Did you give these a number, Mr. Liman?

19 MR. LIMAN: Yes.

20 THE COURT: All are one number?

21 MR. LIMAN: Yes. I made them all one exhibit,  
22 your Honor.

23 Q Can you tell the Court what Chris-Craft's cash  
24 position, including marketable securities, was as of the  
25 end of April 1969?

1 9 dhr

Gordon - direct

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2 A Yes. OUR cash and marketable securities as at  
3 April 30, '69, was approximately \$15,000,000.

4 Q What were the cash requirements for Chris-Craft's  
5 operations?

6 A Approximately \$3,000,000.

7 Q What cash did you have available for Piper purchases,  
8 if you had been free to make them for cash at that time?

9 A \$12,000,000.

10 Q Would you tell me what your cash position, including  
11 marketable securities, was at the end of May 1969?

12 A Approximately \$17,000,000.

13 Q And that includes the approximately 3,000,000 that  
14 you need for operations; am I correct?

15 A That's correct.

16 Q What was your cash position at the end of June?

17 A Approximately \$17,000,000.

18 Q And at the end of July?

19 A Approximately \$19,000,000.

20 Q Do you have August there, also?

21 A I don't have August.

22 Q The August are in the --

23 A I know August.

24 Q What were the August?

25 A Approximately \$14,000,000.

10 dhr

Gordon - direct

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Q And that is after taking into account the cash that was expended on the exchange offer and some cash purchases in August; am I correct?

A Yes.

Q Can you tell the Court why Chris-Craft stopped buying Piper in early August of 1969?

A Yes. We had no chance of reaching 51% in our judgment.

Q Mr. Gordon, in giving the figures that you have just given, are these figures without consideration of such additional borrowings as you might have attempted to make?

A That's correct.

Q And you have previously given testimony concerning your opinion as to additional borrowings that you might have been able to make; am I correct?

A That's correct.

MR. RYAN: I object to the form of that question.

MR. LIMAN: I have no further questions.

THE COURT: I suppose that that shouts down your objection.

MR. LIMAN: I have no further questions.

THE COURT: Any cross-examination?

MR. RYAN: Just one moment, your Honor. Just one or two questions.

1 11 dhr

Gordon - cross

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2 CROSS-EXAMINATION

3 BY MR. RYAN:

4 Q Mr. Gordon, do I understand your direct testimony  
5 to be that at the end of April, May, June, July and August  
6 of 1969 Chris-Craft had available for the purchase of  
7 Piper securities sums ranging from 12,000,000 in April,  
8 19,000,000 in July and 14,000,000 in August?

9 A Yes.

10 Q Did Chris-Craft have outstanding at that time  
11 5-3/4% notes?

12 A Yes, we did.

13 Q Were there any restrictions in the notes concerning  
14 what Chris-Craft could purchase Piper securities for?

15 A Yes, there were restrictions in the notes.

16 Q Didn't the notes prevent Chris-Craft from  
17 purchasing Piper securities for anything other than equity  
18 securities of Chris-Craft?

19 A No, sir, they did not.

20 Q Let me show you a letter dated April 23, 1969,  
21 which is a copy of a letter from Chris-Craft, on the  
22 letterhead of Chris-Craft Industries, Inc., to the note  
23 purchasers under the note purchase agreement dated December  
24 20, 1965, as amended, and it is signed Chris-Craft Industries  
25 by C. Leonard Gordon, and ask you, please, does this refresh

1 12 dhr

Gordon - cross

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2 your recollection?

3 THE COURT: Is that his letter?

4 MR. RYAN: Is that his letter? Right.

5 Would you mark this as Defendant's Exhibit --

6 THE COURT: Do you remember the letter, Mr.  
7 Gordon?

8 THE WITNESS: Yes.

9 THE COURT: He remembers the letter.

10 MR. RYAN: He remembers the letter.

11 Q Didn't the note holders require Chris-Craft to  
12 agree in April of 1969, when the note holders gave it a  
13 waiver of the previous violation of the notes by the  
14 Chris-Craft's prior purchases in January of 1969, that no  
15 more cash over and above \$7,000,000 could be spent for  
16 Piper securities?

17 A No, sir.

18 Q That is not true?

19 A No, sir.

20 Q Well, no restrictions at all; is that your  
21 testimony?

22 A No, sir. You asked me if it prevented us from  
23 buying Piper stock, and I said no, it did not.

24 Q Well, if you bought Piper stock, would you have  
25 violated the conditions of the notes?

1 13 dhr

Gordon - cross

2 A I can answer it this way: If we bought 51%,  
3 the restrictions of the notes disappeared. To buy up a  
4 certain percentage, I forget the exact number, up to 46  
5 or 47%, we could have done that, too, as my recollection;  
6 and to buy <sup>above</sup> ~~at~~ that level I was assured we would get waivers  
7 to do so.

8 Q You would get waivers to do so. You were assured?

9 A Yes, sir.

10 Q But the purchasers for cash would have been in  
11 violation of the notes; is that right?

12 A Not with waivers at that level. And if we got  
13 to 51% in 1 leap, then we didn't need any waivers at all.

14 Q But you would be in default if you began  
15 purchasing for cash these Piper securities during this  
16 period of time, August of 1969, and you had not reached  
17 your 51% yet?

18 A You mean subsequent to August?

19 Q That is correct.

20 A Well, we did get a waiver subsequent to August  
21 and subsequent to this.

22 Q When?

23 A I forget the exact date.

24 Q Long after August, wasn't it?

25 A I forget the exact date. We got a waiver when

1 14 dhr

Gordon - cross

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2 we asked for it.

3 Q Did IDS or the note holders give these waivers  
4 to Chris-Craft without any complaint; it was just an  
5 open assurance to you?

6 A No, sir. IDS wanted to be assured that we had  
7 adequate ability to pay off their note ultimately. And  
8 we could assure them of that because we had adequate assets  
9 to do so.

10 MR. RYAN: I have no further questions.

11 CROSS-EXAMINATION

12 BY MR. ARNING:

13 Q I note the balance sheets you just presented, Mr.  
14 Gordon, for the cash item (including time deposits).

15 Can you tell me about how much of the cash item  
16 there was in time deposits versus demand deposits?

17 A No. I don't know how much of that was.

18 Q Have you an approximate --

19 A No, I don't have the approximation.

20 Q Did something happen between the expiration of  
21 your original cash tender offer in early February and  
22 April 30th, the first balance sheet we have here that  
23 significantly improved the cash position of Chris-Craft?

24 A Generally speaking, our cash position improves  
25 -- would improve in June, July and August, September.

2 I can't think of anything in February offhand that improved  
3 it.

4 Q This is a seasonal thing, you naturally have  
5 most cash in June, July and August and less cash in the  
6 wintertime?

7 A That's right.

8 Q Because you are in the boat business?

9 A That's right.

10 Q So that what we have here is a peak cash period,  
11 in effect?

12 A No, our peak cash period would be August, and  
13 it all would not be the peak cash.

14 Q Well, among the balance sheets we go through  
15 the end of July; that must be pretty close.

16 A Yes, we would have our cash peak period here.

17 Q Does that explain why you borrowed the 15 million  
18 in February to consummate the original purchase on the  
19 tender offer?

20 A No.

21 Q Can you tell me why you borrowed \$15,000,000,  
22 paying interest on it, when you had surplus cash?

23 A Yes. We wanted to have the cash to go to 51 cash.

24 Q But you never subsequently offered cash in any  
25 significant amount, did you?

1 16 dhr

Gordon - cross

2 A Subsequent to when we were put in the hole by  
3 Bangor Punta, no.

4 Q No. I mean subsequent to the initial tender  
5 offer which was completed, I believe, in early February.

6 A We're talking about the same time. In February  
7 we had a tender offer of our own, as I recall, that became  
8 effective thereafter.

9 Q I believe your recollection may have faded a little  
10 since the trial, Mr. Gordon.

11 A I'm sure it has.

12 Q The original cash tender offer was in January,  
13 I believe, and it expired very early in ~~January~~<sup>February</sup>, is that  
14 correct?

15 A I don't recall when our cash tender offer expired.

16 Q I am trying to refresh your recollection.

17 Wasn't the next step, aside from some relatively  
18 minor cash purchases in the market, the filing of the  
19 registration statement for an exchange offer of securities  
20 as distinct from cash?

21 A At what date are you talking now?

22 Q I believe February 27th is the date that is  
23 suggested for filing the registration.

24 A That's what I said. We filed for an exchange offer.

25 Q You said tender offer, Mr. Gordon.

17 dhr

Gordon - cross

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A I'm sorry, I misspoke. I meant to say exchange offer.

Q Do you recall your testimony at the original trial about your dollar financing through Bernham & Company?

A Part of it I recall, yes.

Q Do you recall testifying at all in the original trial that the cash would become available as an ordinary matter of seasonal development of your business in the period April through July of 1969?

A No. The cash was available outside of the seasonal development of our business. We had the cash to go to 51% and we would have had it without -- even during our -- the height of our season.

Q At the original trial, Mr. Gordon, you testified at some length about the Bernham arrangements and indicated you thought they would still be available in the summer to finance going to 51%. Now you are telling me that was totally unnecessary?

A There was financing available and there was cash available. I think I testified that we could have gotten financing if we needed it. I think that was in response to a question as to whether we could have gotten financing. There was cash available, also, as our balance

1 18 dhr

Gordon - cross & redirect

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2 sheet shows.

3 MR. ARNING: No further questions, your Honor.

4 REDIRECT EXAMINATION

5 BY MR. LIMAN:

6 Q Your discussions with <sup>Burnham</sup>~~Bernham~~ were at the time of  
7 the cash tender offer; am I correct?

8 A Yes.

9 Q At that time you had a smaller position than you  
10 had in the end of July?

11 A We had a smaller position and we didn't have the  
12 exchange offer shares, either, which <sup>were acquired</sup>~~are required~~ without  
13 cash.

14 Q You were asked about why was there a reason you  
15 did not buy additional shares for cash if you had the money.  
16 Was there a reason after April 7, 1969 why you did not do  
17 that?

18 A Yes.

19 Q Is that a date of some significance, April 7th,  
20 1969, to you? If I refer to a meeting at the SEC?

21 A Yes. We were advised by the SEC that it would  
22 be unlawful to make additional purchases for cash because,  
23 we had an exchange offer extant.

24 MR. LIMAN: No further questions.  
25

1 19 dhr

Gordon -recross

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## 2 RECROSS-EXAMINATION

3 BY MR. ARNING:

4 Q Did anything prevent you withdrawing the exchange  
5 offer and making a cash offer instead?

6 A No.

7 MR. LIMAN: No further questions.

8 BY THE COURT:

9 Q Mr. Gordon, I would like to get your view of  
10 what Judge Mansfield said and in what respect it may be  
11 in error so as to inform myself adequately here.

12 In his opinion for the minority, he said:

13 "By February 4, 1969, CCI had purchased 540,000  
14 shares of Piper stock at a cost in excess of \$30,000,000.  
15 Its cash resources were virtually exhausted. Yet it did  
16 not seek waivers from its senior note holders to permit  
17 additional borrowing. Indeed, the parties have further  
18 stipulated that no resolution authorizing CCI to borrow  
19 money or obtain credit from any other source to purchase  
20 Piper stock was ever sought or adopted.21 "The reason for CCI's failure to seek additional  
22 loans was made clear by testimony of Mr. Woudhuysen,  
23 a partner of <sup>Burnham</sup> ~~Bornham~~ & Company, that the borrowing terms  
24 would have involved an 8-3/4% interest rate plus the  
25 issuance of 22,550 CCI warrants, exercisable at the

1 market price of CCI common stock, for each million dollars  
2 borrowed on a two-year loan. Thus if CCI should borrow  
3 \$20,000,000 on such a two-year loan the total cost of the  
4 money, calculated according to a commonly accepted  
5 formula, would have been a staggering 43.11%.

6 "In summary, having 'shot its bolt' in the  
7 financial sense by early February 1969 CCI was thereafter  
8 relegated in quest for control of Piper to the use of  
9 exchange offers."

10 Is there any comment that you want to make to  
11 that quotation?

12 A Well, it's contrary to the facts which are in  
13 our balance sheet and which I just testified to in --  
14 to the extent that it says we had exhausted our financial  
15 resources, <sup>And</sup> ~~and~~ the cost to Chris-Craft of the <sup>Burnham</sup> ~~Bernham~~  
16 financing ~~was~~ evaluated, as I recall by the Goldman, Sachs  
17 analysis, was -- this was the analysis of warrants in  
18 the hands of the public, and how they valued warrants in  
19 the hands of the public, and it had no meaningful  
20 relationship to the cost <sup>of</sup> ~~to~~ Chris-Craft of the <sup>Burnham</sup> ~~Bernham~~  
21 financing.

22 Q By the beginning of June of 1969, you realized  
23 that Bangor Punta had 45% of the Piper stock, didn't you?

24 MR. LIMAN: Objection, your HOnor. That is not  
25

1 21 dhr

Gordon

2 the facts.

3 THE COURT: Please now. Do not tell me what  
4 it is not. I do not want anything here that carries into  
5 it any statement of fact.

6 MR. LIMAN: May I have --

7 THE COURT: What is the ground of your objection?

8 MR. LIMAN: The ground of my objection is that  
9 by the end of June or beginning of June Bangor Punta did  
10 not have 45%.

11 THE COURT: All right.

12 Q How much stock did Bangor Punta have after the  
13 May transactions?

14 A After the purchase of the stock from Bernie  
15 Cornfeld?

16 Q Yes.

17 A By Bangor Punta?

18 Q And the other so-called 10(b) (6) transactions,  
19 I suppose.

20 A I think that -- was that when they were at 33%  
21 and we were at 31%? I haven't looked at this for a long  
22 time. If somebody could supply me with those documents.  
23 Is that when they were at 33 and we were at 31?

24 MR. RYAN: Your Honor, the Bangor Punta acquired  
25 approximately 31% of the outstanding stock of the Piper

family and approximately 7% of the outstanding stock in the three transactions in May.

THE COURT: I should have said 38% instead of 45.

MR. RYAN: That is right.

THE COURT: I misspoke. I meant to say 38.

I would like to rephrase it and correct my own error.

Q By the beginning of June 1969 you realized that Bangor Punta had 38% against your 33% of Piper stock; is that right?

A Yes.

Q At that time how did you evaluate your chances of getting control?

A Our chances of getting control were in large part related to the question of the <sup>legality</sup> ~~health~~ of Bangor Punta's acquisition of that 7% stock that they purchased after the SEC warning that any purchases would be unlawful, so that our chances were slim unless the Bangor Punta acquisition was unlawful.

Q So that you felt that subject to getting those acquisitions declared unlawful, Chris-Craft had a very slim chance of getting control by about the beginning of June of 1969?

1 23 dhr

Gordon

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2 A Yes. By that you mean unless -- you said subject  
3 to its being -- unless it was declared unlawful?

4 Q Yes.

5 A Yes, I think that is correct.

6 Q Now, turning to another subject.

7 In 1970, the board of Piper was increased to ten,  
8 was it not?

9 A Yes, I think so.

10 Q By about October of 1970: is that the approximate  
11 date?

12 A I just haven't refreshed my recollection on this.

13 Q Do you recall estimating at that time for your  
14 benefit and the benefit of your cohorts in Chris-Craft  
15 how many directors Bangor Punta was entitled to on the  
16 board of Piper out of that ten?

17 A Yes.

18 Q What was your estimate?

19 A I forget whether it was six or seven.

20 Q I assume --

21 A But it was a majority.

22 Q It was a majority. That is six out of the ten  
23 or seven out of the ten?

24 A Yes.

24 dhr

Gordon

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Q You knew the bylaws <sup>and</sup> ~~on~~ the charter of Piper, did you not?

A Yes, your Honor.

Q And you knew that they had cumulative voting?

A Yes.

Q I have a letter here which was put in evidence yesterday under date of November 19, 1970, which I believe is Exhibit 171.

MR. LIMAN: Can I show it to the witness, your Honor?

THE COURT: It won't be necessary.

MR. LIMAN: Okay.

Q In which I read to you this sentence addressed to Mr. Wallace:

"Since you own over 50% of the stock of Piper, it was within your power to elect a majority of the directors. Our stock under cumulative voting entitles us to four places."

That was your opinion at the time, was it?

A Yes, That refreshes my recollection. It wasn't seven but six.

Q Did you, in order to reach that opinion, make any calculations?

A I either made calculations or had them made for me.

Q And you knew what the number of shares was that were involved at the time?

A Yes.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. LIMAN:

Q Mr. Gordon, when you said that it was subject to the shares being declared unlawful, do you mean the acquisitions are being unwound of those shares?

A That's correct.

MR. LIMAN: No further questions.

[The witness excused.]

MR. LIMAN: Mr. Potts now, if I may, your Honor.

ROBERT HENDERSON POTTS,  
called as a witness on behalf of the plaintiff,  
being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LIMAN:

Q Your age, sir?

A 50.

Q Where are you from?

A I'm from --

Q Where do you live?

1 26 dhr

Potts - direct

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2 A I live in Strafford, Pennsylvania, 22 miles west  
3 of Philadelphia.

4 Q What is your occupation?

5 A I am employed by the Philadelphia National Bank  
6 bearing the title of vice chairman in my -- and I am  
7 responsible for the entire domestic and international  
8 loan portfolio.

9 Q Are you the senior loan officer for the bank?

10 A I am.

11 Q What is the amount of that portfolio for which  
12 you have responsibility?

13 A Approximately \$2,100,000,000.

14 Q Have you been the principal banker for Chris-Craft  
15 and the predecessor corporations with which Herbert <sup>Siegel</sup> ~~Siegel~~  
16 has been affiliated?

17 A I have.

18 Q For how long has that relationship existed?

19 A This dates back to the late fifties, '57, '58.

20 Q Are you familiar with Chris-Craft's financial  
21 condition in July, August and September of 1969?

22 A I am.

23 Q Mr. Potts, in your opinion, if Chris-Craft was  
24 required to borrow additional money in order to make  
25 further purchases of Piper, and at the time Chris-Craft

1 27 dhr

Potts - direct

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2 led in the control contest either 41 to 31 or 42 to 37,  
3 would additional money have been made available to Chris-Craft  
4 for its purchases?

5 MR. RYAN: We enter the same objection we made  
6 this morning to Mr. --

7 THE COURT: I will sustain that objection, but  
8 take the proof for the benefit of anybody who wants to review  
9 it.

10 Q Would such money have been available?

11 A Yes. May I qualify this? The basis of determining  
12 whether or not this loan would have been advanced by us,  
13 other institutions in the commercial banking industry, or  
14 by the investment banking industry, would have depended  
15 primarily on the soundness of the credit by either strength  
16 of  
17 to the balance sheet, the earnings record, and from our  
18 standpoint whether this additional purchase would have  
19 in fact enabled Chris-Craft to gain control.

20 All of those would have been factored into this.  
21 But at that time, based on the financial standing, the  
22 earnings record for the previous year, the improving  
23 earnings performance in 1969, it is my considered judgment  
24 that the money would have been obtainable.

25 Q And up to how much additional money could have,  
in your judgment, been advanced if the control contest

1 28 dhr

Potts = direct

3105 A

699

2 stood at the point that I gave you?

3 A This really would depend upon the amount of money  
4 needed.

5 If I may, your Honor, you normally do not respond  
6 to the request by a would-be borrower, "How much am I  
7 entitled to?" The purpose, the strength of the balance ~~sheet~~,  
8 the earnings records, the cash flow, the ability to repay,  
9 are all factored in.

10 So, to answer your question, it is my belief that  
11 the amount of money necessary would have been needed, but  
12 you're not going --

13 Q Would have been needed?

14 A The amount of money that would have been needed,  
15 and I am assuming, I have to assume, that it's a certain  
16 figure -- there's a level beyond which that perhaps you  
17 would not go along.

18 Q Now, would, in your judgment, \$10,000,000 have  
19 been available?

20 A Yes, sir.

21 Q In your opinion as a banker, is a majority interest  
22 in a corporation more bankable than a minority interest  
23 where somebody else holds the majority?

24 A Without question.

25 MR. LIMAN: No further questions.

1 29 dhr

Potts - cross

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2 MR. RYAN: May we have just one moment, your  
3 Honor? We just have a few questions, your Honor.

4 CROSS-EXAMINATION

5 BY MR. RYAN:

6 Q Mr. Potts, you are now vice chairman of the  
7 Philadelphia Bank?

8 A Yes, sir.

9 Q In 1969, what was your position?

10 A Executive vice president.

11 Q Were you a member of the executive committee?

12 A I was a member of the executive committee in the  
13 absence of the president of the bank.

14 Q So you were an ex-officio member of the executive  
15 committee?

16 A Correct.

17 Q Were you the bank officer that introduced  
18 Chris-Craft to Philadelphia National Bank?

19 A Yes, sir, but there were predecessor corporations  
20 with which we were associated involving Herbert <sup>Siegel</sup>~~Siegel~~.  
21 The answer is yes.

22 Q With Mr. <sup>Siegel</sup>~~Siegel~~. Were you the one or did you  
23 recommend approval of the \$15,000,000 loan to Mr. <sup>Siegel's</sup>~~Siegel's~~  
24 company, Chris-Craft, in January or so of 1969?

25 A I did.

30 dhr

Potts - cross

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Q Has that loan ever been repaid?

A It has been reduced, and then again increased.

Q I asked you if it has ever been repaid.

A No, sir.

Q How much has it been reduced?

A It has been reduced -- at the present time I think the full amount is outstanding, but it has been as low as twelve or thirteen million dollars.

THE COURT: You say the full amount is outstanding?

THE WITNESS: I believe so at this time.

THE COURT: Then, how is it reduced if the amount is outstanding?

THE WITNESS: It's a revolving credit. In between the time the initial advance was made there would have been reductions.

THE COURT: Oh, I see.

Q At any time did that loan become what is called an offshore loan?

A Yes, sir.

Q Did you participate in the group that was formed?

A We did.

Q Did that group receive any additional compensation other than the interest on the loan?

A The group of participating banks as a group did not.

1 31 dhr

Potts - cross

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2 Those participating banks did receive, you might call it,  
3 compensation, but it remains to be seen whether in fact  
4 it will be.

5 Q In warrants?

6 A Correct.

7 Q A hundred thousand warrants?

8 A Correct.

9 Q Did you have anything to do with the formation of  
10 that group?

11 A Yes, sir.

12 Q Did you recommend this loan to that group?

13 A We did.

14 Q And you are slightly interested in seeing that  
15 loan is repaid?

16 A Yes, sir.

17 Q Now --

18 A That loan has been repaid.

19 Q The offshore loan has been repaid?

20 A That is correct.

21 Q Who repaid it?

22 A The Philadelphia National Bank.

23 Q In other words, you took the foreigners out?

24 A Yes.

25 Q And you are in it now alone?

1 32 dhr

Potts - cross

703

2 A That is correct.

3 Q In making your examination, when you arrived at  
4 the conclusion that there was at least \$10,000,000 available,  
5 you, as a bank officer, a loan officer, a vice chairman  
6 I assume at that point, would have recommended to your  
7 loan committee that you advance to Chris-Craft up to \$10,000,000  
8 based upon its balance sheet and earnings record in the  
9 summer of 1969 to get into this contest between Bangor Punta  
10 and Chris-Craft.

11 MR. LIMAN: Could I have that question read back,  
12 your Honor?

13 MR. RYAN: Let me withdraw it and rephrase the  
14 question.

15 Q Your testimony is, as I understand it, that you,  
16 in your opinion, and also I assume as a vice chairman of  
17 the Philadelphia bank, would have --

18 A Which I was not at that time.

19 Q Not at that time.

20 -- would have, in August of 1969, been prepared  
21 to recommend, based upon Chris-Craft's financial condition  
22 at that time, a loan of an additional \$10,000,000 for it  
23 to purchase securities of Piper in the contest between  
24 Bangor and Chris-Craft?

25 A By our bank?

1 33 dhr

Potts - cross

704

2 Q Yes.

3 A This would have been legally impossible because  
4 our legal limit at that time would not have permitted us  
5 to advance the additional funds.

6 Q Would you have been prepared to recommend it to  
7 a bank that did have sufficient --

8 A I would have been perfectly prepared to introduce  
9 the Chris-Craft situation to other bankers, some of whom  
10 were already familiar with the picture, because when we  
11 first made our commitment in 1969 there were two participants,  
12 Chase and Marine Midland.

13 Q Would you have recommended it?

14 A Would I have recommended it?

15 Q Yes.

16 A I would have recommended it on the basis that  
17 we were already involved in the extent of \$15,000,000. I  
18 would have invited them to make their own independent  
19 judgment, but they had recognized, as a result of our  
20 participation, that we already had great confidence.

21 Q Did you know at that time that there was  
22 outstanding the five and three-quarter senior notes?

23 A Yes, sir.

24 Q Did you examine, at the time you arrived at this  
25 conclusion, what restrictions there were?

A We were made aware of them by the borrower.

Q By whom?

A By Chris-Craft management.

Q By Chris-Craft management.

And you know that if Chris-Craft, under the terms of those loan agreements, had spent in excess of, in August of 1969, approximately two or three million dollars more, at most, in cash of Piper securities, it would have been in default under those notes?

MR. LIMAN: Objection to the form.

THE COURT: Would it, in your opinion, have been in default?

THE WITNESS: Would it, in my opinion, have been in default?

THE COURT: Yes, knowing what the contents were of that agreement.

THE WITNESS: Based on my recollection of the provisions in that agreement, yes, it is my understanding that there would have been a default.

At that time, if I may add, we were aware of and also strongly encouraging the Chris-Craft management to fully acquaint the IDS and associates with the situation as it existed.

THE COURT: Did Chris-Craft come to you in that

1 35 dhr

Potts - cross

2 period of time and ask you for more money?

3 THE WITNESS: To my recollection, they did not.

4 THE COURT: They were not seeking any further  
5 accomodations?

6 THE WITNESS: They at that time were in a very  
7 strong cash position. It was -- it would have been to our  
8 interest, as principal creditor, to see Chris-Craft achieve  
9 control of Piper.

10 THE COURT: Wasn't it to your interest, also,  
11 to get yourself paid out?

12 THE WITNESS: Always we're in the business of  
13 making loans, and also having them repaid.

14 THE COURT: Being in that strong position,  
15 did you ask them to pay you back any of your money?

16 THE WITNESS: At that time, no, sir.

17 THE COURT: How long had the loan been outstanding  
18 at that time?

19 THE WITNESS: The loan had -- the \$15,000,000  
20 credit was authorized in January of 1969, and up until that  
21 point, why, the loans had been growing as Chris-Craft  
22 was making its purchases of Piper stock.

23 THE COURT: And no paydowns had been made  
24 despite the strong cash position that you referred to?

25 THE WITNESS: That is -- at that time that is

1 36 dhr

Potts - cross

707

2 correct.

3 Q Do you know what the principal amount of the  
4 5-3/4 senior notes were in August of 1969?

5 A I believe they were sixteen or seventeen million  
6 dollars.

7 Q That is close enough.

8 Now, if IDS or the senior note holders did not  
9 agree to waive the default, would you have been prepared  
10 to loan an additional \$19,000,000?

11 A I think I have already stated that it was legally  
12 impossible for us to loan more.

13 Q In your opinion, would you think some other bank  
14 would have come in?

15 A I think there's a likelihood that other lenders  
16 at that time would have come in, but they would have come  
17 in, but they would have exacted -- I am adding this -- a  
18 greater price.

19 THE COURT: Are you talking about bank lenders?

20 THE WITNESS: It could have been a combination  
21 of bank lenders and institutional lenders.

22 THE COURT: You mean to say that an ordinary  
23 banking institution would have loaned money under the  
24 existing financial circumstances at that time on top of all  
25 of these other outstanding obligations and restrictions?

1 37 dhr

Potts = cross

708

2 THE WITNESS: At that time the company had come  
3 off of a perfectly good earnings year; it had television  
4 properties, the value of which had been estimated and  
5 which we had taken pains to confirm; the industrial portion  
6 of the business had been operating profitably; the boat  
7 division had a good year in 1968 and 1969.

8 THE COURT: Was there anything on the credit file  
9 which was a flag on that credit file saying no more money  
10 to Chris-Craft?

11 THE WITNESS: There was no such flag on the file.  
12 There was immediate concern on our part when this developed  
13 into a battle for control between Bangor Punta and Chris-Craft.

14 THE COURT: What did you do about the concern?

15 THE WITNESS: Expressed it greatly to Herbert  
16 Siegal and his associates.

17 THE COURT: What did you tell him that you thought  
18 he ought to do?

19 THE WITNESS: Try to resolve his differences with  
20 the other side.

21 THE COURT: Did you suggest to him to quit the  
22 fight?

23 THE WITNESS: At that point they are really so  
24 far down the road, in my opinion it was beyond the point  
25 of no return.

1 38 dhr

Potts - cross

709

2 THE COURT: That is not what I asked you, about  
3 your opinion. I asked, did you make a suggestion to him  
4 that he had gone far enough?

5 THE WITNESS: To my recollection, no.

6 MR. RYAN: I have no further questions.

7 Mr. Arning may have some.

8 MR. ARNING: One moment.

9 CROSS-EXAMINATION

10 BY MR. ARNING:

11 Q In general, in your making loans as a banker,  
12 is there any particular ratio you would expect in the  
13 type of company that Chris-Craft is between current assets  
14 and current liabilities?

15 A General ratio. In making commercial loans, you --  
16 one normally does not do this on a formula basis. In  
17 deciding whether or not you're going to make a loan, you  
18 will attempt to determine at the outset how it is going to  
19 be repaid, either through earnings, either through the  
20 sale of assets, or what-have-you, or through -- by the  
21 means of being taken out by other lenders or investors.

22 And at that time it was our judgment that the  
23 underlying values in the balance sheet, the earnings record,  
24 and the value of the assets which they were acquiring,  
25 i.e., Piper, were such that either through earnings,

1 39 dhr

Potts - cross

710

2 refinancing, or the sale of assets that the loan could  
3 readily be repaid.

4 Q Of course, the earnings of Piper would not  
5 necessarily be available unless they got a hundred percent  
6 and merged, would they?

7 A No, but this has been achieved before.

8 Q Were there any particular assets you were looking  
9 to for that sale, the sale of assets that you referred to?

10 A That we were looking to as a lender?

11 Q Yes. I understand one of the things you would  
12 have looked at, if you had made the loan which you could  
13 not make --

14 A We were looking at all of the assets in the  
15 Chris-Craft picture.

16 Q Did they indicate they proposed to sell any of  
17 them?

18 A At that time?

19 Q Yes.

20 A They indicated that they were amenable to selling  
21 some of them.

22 Q Let us pose some assumptions for you, Mr. Potts.  
23 Assume that at the time we are discussing -- well,  
24 first, excuse me.

25 Before we get to that, did we have a dollar amount

1 40 dhr

Potts - cross

711

2 fixed on the opinion you expressed, how much additional  
3 money would be loaned?

4 A At that time the figure \$10,000,000 was suggested,  
5 and I have indicated that I believed that that amount of  
6 money could have been borrowed by Chris-Craft.

7 Q Could an additional \$20,000,000 have been borrowed?

8 A I have no way of answering that. Twenty million  
9 would have been much more difficult than ten.

10 Q And fifteen would have been <sup>50%</sup>~~5%~~ more difficult  
11 than ten?

12 A That's reasonable, yes.

13 Q Do you have any opinion, that either the fifteen  
14 or the twenty million dollar level?

15 A I think it would have depended on the factors  
16 at that time. You would have had to be given all of the  
17 factors, been able to weigh them as to whether or not you  
18 would -- a favorable judgment would be made.

19 Q Did you ever run into a reaction from other banks  
20 when you suggested they join you in a loan of this type,  
21 that you were just asking to be helped out or bailed out  
22 and thanks a lot, but no thanks?

23 A No, we don't follow the practice of asking other  
24 banks to do something for which we'd have to apologize or  
25 <sup>would</sup> we expect to have to apologize.

1 41 dhr

Potts - cross & redirect

712

2 Q All right.

3 Now, I will go back to my assumptions, if you will.

4 Would you assume that at the same time you are  
5 discussing this proposed loan to buy more shares of Piper  
6 at a price in the range of \$80 per share, that you have it  
7 on good authority that the fair market value is approximately  
8 \$52, and that if the attempt to acquire a majority control  
9 fails, the stock will be worth only about \$25 per share.

10 Would that have any effect on your opinion as  
11 to whether or not an additional loan could have been made?

12 A Without question, yes.

13 Q It would be a negative effect?

14 A It could be a negative effect. It would certainly  
15 have to be more negative than positive.

16 MR. ARNING: No further questions.

17 REDIRECT EXAMINATION

18 BY MR. LIMAN:

19 Q Would you, in giving consideration to whether to  
20 make a loan, take into account the fact that if Chris-Craft  
21 did not get 50%, there would be a substantial depreciation  
22 in the asset it had already acquired?

23 A Yes.

24 Q And that would be a factor?

25 A Yes, indeed.

42 dhr

Potts - redirect

713

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THE COURT: That question is at what point do  
you stop putting up margin; isn't that really what the  
question is?

THE WITNESS: Yes, that's fair.

THE COURT: Those who get sold out on the first  
margin call generally come out with money; isn't that the  
experience?

THE WITNESS: Happily.

Q Mr. Potts, when I asked you the questions as to whether the money would be available, I asked you on the assumption that Chris-Craft was leading 42 to 37, 41 to 31; am I correct?

A Yes, sir.

Q And expressing your opinion, you took into account the odds inherent in those percentages; am I correct?

A You are correct.

Q If I asked you the same questions as to whether you would recommend a loan if Chris-Craft's position was 41 and Bangor Punta's position was 45, what would your answer be?

A My answer would be -- will the additional loan in fact give Chris-Craft control?

Q If I told you that Bangor Punta had 45% and Chris-Craft had 41, can you say that you would have recommended the loan?

A If this would have given them control? Chris-Craft? Again, I would have to qualify this and say it depends on the dollars that are involved. From the standpoint of that, the reaction has to be considerably more negative.

Q That's because of the percentage difference in the figures I have given you, that Bangor Punta is ahead?

1  
2 A Correct.

3 Q Do I understand the testimony to be that if your  
4 judgment was that Bangor Punta's lead could not be overtaken  
5 you would not make the loan?

6 MR. SHIMER: Objection. He is leading the witness.

7 THE COURT: I think the implications are pretty  
8 clear from the witness' testimony.

9 MR. LIMAN: I don't need that. I agree.

10 Q Mr. Potts, just so the record is clear, in 1969  
11 were you the second in command and at the Philadelphia  
12 National Bank?

13 A I was.

14 Q How long had you been with the bank?

15 A In 1969 I had been with the bank twenty years.

16 Q What is your educational background?

17 A I went to Yale University.

18 MR. LIMAN: No further questions.

19 MR. RYAN: No further questions.

20 THE COURT: Thank you, Mr. Potts. You are excused.

21 [Witness excused.]

22 MR. LIMAN: Other than cleaning up the documents,  
23 we rest, your Honor.

24 THE COURT: Off the record.

25 [Discussion off the record.]

3 PGR

716

1  
2 THE COURT: I am assuming the briefs that have  
3 already been submitted cover the contentions reflected  
4 by the direct examinations of the witnesses. If there  
5 is any collation of information and analysis that I should  
6 have from each of the parties in respect to what the  
7 cross-examinations have established, I would like to get  
8 that, even if it is on the subject of credibility alone,  
9 so that that will assist me in tracking down and collating  
10 the record and understanding the respective positions.

11 I think all of you will agree that the contention  
12 document as submitted has kind of been cast adrift and  
13 we moved in a further direction. I hope you now see the  
14 wisdom of my having maintained independence on that subject.

15 I think that the proof adduced by each side  
16 indicates that the contentions are materially different  
17 so far as the way the proof is developed.

18 I am making this suggestion to you, that if you  
19 think that you can be of assistance to me without repeating  
20 what you have in your primary submission, by collating  
21 and analyzing and documenting the cross-examination, that  
22 might be a useful thing in helping me expedite the analysis  
23 of the record.

24 MR. LIMAN: Both sides will want to exchange  
25 suggested corrections because the transcript had some

1 4 pgr

2 failings despite the expertise --

3 THE COURT: Send me a copy of that.

4 MR. SHIMER: May we operate on the assumption  
5 that the prior record on the first trial is part of this  
6 record?

7 THE COURT: I think it is all part of it as  
8 amended by the Court of Appeals.

9 MR. AUSPITZ: Your Honor, we offer in Evidence  
10 Exhibit 177 for Identification, the balance sheets that  
11 Mr. Gordon used in his testimony.

12 The next offer is 176 for Identification, a sheet  
13 of penciled notes used by Mr. Ross in his testimony.

14 Exhibit 175, which is a typed version of a  
15 chart used by Mr. Ross in his testimony.

16 Exhibit 174, a memo from Donald J. Fennelly to  
17 Alan Cornfeld and others, dated November 25, 1969.

18 Exhibit 173, a letter from Nicholas Salgo to  
19 Leonard Gordon, dated February 20th, 1970.

20 Exhibit 172, a letter from William T. Piper, Jr.  
21 to David Wallace, dated August 18th, 1971.

22 MR. LIMAN: Your Honor, these have been identified  
23 on the record before. Could we simply read the numbers?

24 THE COURT: No, no. Put the date and the number.  
25 He is going to make an index. He needs it for his index.

5 pgr

718

MR. AUSPITZ: Exhibit 171 for Identification ,  
a letter from David Wallace to Leonard Gordon, dated  
November 17, 1970.

Exhibit 170, a letter from Leonard Gordon to  
David Wallace, dated November 19th, 1970.

Exhibit 169, a letter from David Wallace to  
Leonard Gordon, dated December 4, 1969.

Exhibit 168, a letter on Bangor Punta stationery,  
dated December 2nd, 1969, "To our Shareholders," and signed  
by Messrs. Salgo, Robertson and Wallace.

Exhibit 167, a copy of Bangor Punta's schedule 13d  
as amended.

Exhibit 166, Bangor Punta's report for the nine  
months ended June 30th, 1969.

Exhibit 165, a set of projections referred to by  
Mr. Gant in his testimony.

Exhibit 163, a copy of the proxy statement, A.M.K.  
Corporation in connection with United Fruit, used by Mr.  
Gant in his testimony.

Exhibit 159, the report of Robert Oppenheimer  
& Company.

Exhibit 158, a set of comparisons used by Mr.  
Cohen in his testimony.

THE COURT: Is that report of Oppenheimer dated?

1 6 pgr

2 MR. AUSPITZ: It is.

3 MR. LIMAN: March 26th, 1974.

4 MR. AUSPITZ: There is one more item, your Honor.  
5 I promised you a better copy of that chart which I now  
6 hand up.

7 MR. LIMAN: Your Honor, what I would like to  
8 do is send you one which is blown up. Even though this  
9 is a better copy I think it will strain your eyes.

10 MR. AUSPITZ: Finally, you asked for a chart  
11 showing the source of the funds which Mr. Cohen used in  
12 his interest computations, and I have that here. I can  
13 mark that as 157-A.

14 In preparing that chart, Mr. Cohen discovered  
15 a clerical error in his computations and I have a revised  
16 interest computation which has been given to the defendants,  
17 and I would like to substitute that for Page 1 of 157.

18 Finally, we offer three letters:

19 Exhibit 178 for Identification is a letter from  
20 Leonard Gordon to William T. Piper, Jr., dated December 29,  
21 1969.

22 Exhibit 179, letter from Leonard Gordon to Nicholas  
23 Salgo, dated March 9, 1970.

24 Exhibit 180, a letter from Leonard Gordon to  
25 Charles <sup>W. Pool</sup> ~~Hall~~, dated August 11th, 1970.

1 7 pgr

720

2 [The aforementioned exhibits were received  
3 in Evidence.]

4 MR. SHANK: Your Honor, we offer the following:  
5 Exhibit BO, a copy of the bylaws of Piper Aircraft  
6 Corporation, which are currently in effect.

7 THE COURT: Have you got the bylaws that were  
8 in effect in September of 1969?

9 MR. SHANK: I can get them for you.

10 THE COURT: I would like to have those bylaws  
11 marked as BO-1.

12 MR. LIMAN: We will agree on that, your Honor.

13 MR. SHANK: I will get the bylaws from 1969 up  
14 through this one with all changes so whatever changes there  
15 were along the way --

16 THE COURT: Do me a favor by bracketing or  
17 underlining that so I won't have to read through every copy.

18 MR. SHANK: Yes, your Honor.

19 Exhibit BP is a copy of the Piper Aircraft  
20 Corporation articles of incorporation, and this has not  
21 been changed since 1965, I believe, your Honor.

22 Exhibit BQ is a notebook containing copies of  
23 minutes for the regular and special Board of Directors  
24 meetings of Piper from August 12th, 1969 through October 15th,  
25 1970.

1 8 pgr

721

2 Exhibit BR is another notebook containing the  
3 minutes of regular and special Board of Directors meetings  
4 from November 11th, 1970 through September 21, 1972.

5 Minutes of Executive Committee meetings on May 17th and  
6 June 8th, 1971, and August 23rd, 1972, and of the annual  
7 shareholders' meeting on February 21, 1971.

8 Exhibit BS is a notebook containing minutes of  
9 regular and special Board of Directors meetings of Piper  
10 from October 31st, 1972 through November 13th, 1973, and  
11 the minutes of one executive committee meeting on July 6th,  
12 1973.

13 Exhibit BT contains draft minutes of the regular  
14 Board of Directors meetings of Piper from December 5, 1973  
15 through March 18th, 1974. They were circulated to the  
16 directors but have not yet been approved by the Board.

17 Exhibit BU is a stipulation signed by <sup>all</sup> ~~our~~ counsel  
18 which lists the purchases of Piper stock by both Chris-Craft  
19 and Bangor Punta subsequent to the August - September period  
20 in 1969, all of the purchases by date, number of shares,  
21 and price paid.

22 THE COURT: Could that be supplemented so as to  
23 show the sequence and percentages which prevailed beginning  
24 May 1st, 1969?

25 MR. SHANK: We could certainly do another --

1 9 pgr

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2 THE COURT: What I am thinking about is whether  
3 that results in an enhancement of damages with known  
4 factors facing people with slim chances --

5 MR. LIMAN: We could agree on a schedule that  
6 will show from the date that Bangor entered what shares  
7 we had, what percentage we had, and what percentage they  
8 had, and do it as of each transaction at that point.

9 MR. SHIMER: That information is in the prior  
10 record.

11 MR. LIMAN: It would be useful for the Court in  
12 tabular form.

13 MR. SHANK: We will summarize that in that form,  
14 your Honor.

15 Exhibit BV is a letter dated October 28th, 1969  
16 from Mr. Liman to Mr. Ryan.

17 Exhibit BW is a letter dated October 31st, 1969  
18 from Mr. Ryan to Mr. Liman.

19 Exhibit BX is a letter dated November 3, 1969  
20 from Mr. Liman to Mr. Ryan.

21 We have two more that have not yet been marked.  
22 They will be Exhibit BY, a copy of a letter dated April  
23 23, 1969 from Mr. Gordon to the note holders. This is the  
24 letter that was shown to Mr. Gordon during his testimony.

25 I have a group of documents which were just

1 10 pgr

723

2 furnished to us and there is attached a covering letter  
3 from Mr. Rosenkranz to Mr. Ryan dated April 25, 1974.

4 I believe these are the materials that he was requested  
5 to furnish by Mr. Ryan during the course of his examination  
6 relating to the things he had read regarding Bangor Punta's  
7 intention to merge. We will offer that as Exhibit BZ.

8 There is one other minor item: Mr. Fitzgerald's  
9 report at the previous trial was Exhibit AQ. In going  
10 up to the Court of Appeals and back that thing disappeared.  
11 I have a duplicate copy which I have marked as AQ, and  
12 I would like to have it marked as part of the record as  
13 if it were the original.

14 THE COURT: May I suggest this: You keep it.  
15 Somebody gave me a photostatic copy of Bellemore's and  
16 Fitzgerald's. I have those. If there is any problem  
17 about a missing exhibit you keep this one.

18 MR. LIMAN: What do you mean when you say there  
19 is a missing exhibit? This is the exhibit that was marked.

20 MR. SHANK: The one that was marked disappeared.

21 MR. LIMAN: It is the same one.

22 I think that concludes all of our exhibits.

23 [The aforementioned defendant's exhibits  
24 were received.]

25 THE COURT: Does everyone have their exhibits?

11 pgr

723a

Off the record.

[Discussion off the record.]

[Time noted: 12:55 p.m.]

\* \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

CHRIS CRAFT INDUSTRIES, INC., :  
Plaintiff, :  
-against- : 92 CIV 287 (MP)

PIPER AIRCRAFT CORPORATION, HOWARD :  
PIPER, THOMAS F. PIPER, WILLIAM :  
T. PIPER, JR., BANGOR PUNTA :  
CORPORATION, NICHOLAS M. SALSO, :  
DAVID M. WALLACE and THE FIRST :  
BOSTON CORPORATION, :  
Defendants. :

-----X

BEFORE:

HON. MILTON POLLACK,  
District Judge

New York, New York  
November 15, 1974 - 3:30 p.m.

APPEARANCES:

PAUL, WEISS, RIFKIND, WHARTON & GLENNON, ESQs.,  
Attorneys for Plaintiff,  
BY: ARTHUR L. LIMAN, ESQ.,  
ANTHONY RADICE, ESQ.,  
RICHARD MELLER, ESQ.,  
Of Counsel.

SULLIVAN & CROMBELL, ESQs.,  
Attorneys for First Boston Corp.  
BY: JOHN F. ARNING, ESQ.,  
CHARLES W. SULLIVAN, ESQ.,  
Of Counsel.

MEMF

2

## APPEARANCES (Continued)

CHADBURNE, PARKE, WHITESIDE & WOLFF, ESQS.,  
Attorneys for Pipers,  
BY: ZACHARY SHIMER, ESQ., of Counsel.

WEBSTER, SHEPHERD, FLEISCHMAN, WITCHCOCK & BROOKFIELD, ESQS.,  
Attorneys for Banger Punta, Wallace & Salgo,  
BY: JAMES V. RYAN, ESQ.,  
C. KENNETH SHANK, JR., ESQ.,  
ALLAN J. GRAF, ESQ.,  
of Counsel.

- - -

THE COURT: I would like to put to one side  
the question of interest for a moment, and go to the other  
provisions of the decrees that have been proposed.

I have read the one proposed by the plaintiff and  
a counterproposal of the defendants. Mr. Loran in his  
letter raised a question as to where the punctuation  
applied in respect to the laws of Pennsylvania which I  
think was a very proper question on rereading that  
part of his proposal, and I am not sure that either  
decree caught clearly what I had in mind in respect to the  
provisions that I had decided upon.

I have redrafted the judgment. I am going  
to submit a copy to you gentlemen, and there again I take  
this to be a draft soliciting your suggestions after

1           you have absorbed it. I can see already from the  
2           counterproposed order that there may be shorter ways of  
3           expressing some of the things I have here, and I take  
4           no pride of authorship in the matter, and I'd like to  
5           get the best judgment of each of you as to how best  
6           to express what I will try to clarify this afternoon if  
7           there are any questions as to what the decision is, so  
8           that you can go on your respective ways.

9                       May I say parenthetically that I have here the  
10           original exhibits offered by the plaintiff and the  
11           original exhibits offered by the defendants, and I'd like  
12           to turn those over to the respective parties, and this is  
13           without regard to whose paper it is.

14                      These are just put together according to what  
15           exhibit mark the reporter put on them. If they happen to  
16           be the other side's papers, I assume you will exchange  
17           them. But to avoid any possibility of loss or misplacement  
18           of these papers I'd like to get them back to you promptly.

19                      In addition to these papers, I would ask the  
20           corporation to send up those heavy black books I think  
21           that contained minutes, and then there were some other  
22           additional papers that were submitted to pick those up --  
23           I didn't bring them down today but you will have to have  
24           somebody come for them.  
25

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And before we get started, I will just hand these damage exhibits over to the respective parties. These are the plaintiffs' (handing ).

These are the defendants'.

Now, will you please go through those carefully when you go back to your offices to be sure you have everything and call my attention to anything that you think may be missing because before the file gets itself distributed I'd like to see to it that everybody has secure -- has secure possession of what they are entitled to.

Now let me just hand out this third version of the possible decree to be entered here. How many do you need down there, about six?

MR. LIMAN: Your Honor, would you note when you look over your draft that you picked up an embarrassing typographical error in ours in the last page, Piper Aircraft Corporation is not a party against whom money damages may be recovered. That is our fault and your typist followed our form.

THE COURT: All right.

It might be of some help if I call your attention to the fact that I have eliminated the provision that caused the ambiguity in Mr. Liman's mind about debts not in the ordinary course of business.

1  
2           What I intended to say there was that the laws  
3 of Pennsylvania should be followed on that and after the  
4 matter was called to my attention it seemed to me that it  
5 wasn't anything that I was concerned with, because that  
6 would be money coming into the corporation and not a  
7 change of capital or money -- not a change of the capital  
8 structure, and I didn't think it need be referred to at  
9 all on second thought.

10           Now, I say that to give each side an opportunity  
11 to tell me whether I was right the first time, except  
12 for the mode of expression, or whether this is a  
13 preferable way of doing it.

14           MR. RYAN: Your Honor, before we get to that  
15 point, in paragraph 3, "except in accordance with Piper's  
16 charter and by-law the stock issued and outstanding," and  
17 I am not quite sure of the import or purport of those  
18 terms, but --

19           THE COURT: Well, the import is this:

20           If two-thirds of the stockholders of the  
21 corporation are required to pass something under the laws  
22 of Pennsylvania.

23           MR. RYAN: I don't think though that that  
24 would be -- in other words, I don't think that adds anything  
25 if you have that they cannot expand capital and capital

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stays as it was in September 1969.

THE COURT: So as you agree to it?

MR. RYAN: We can't agree -- we agree to it, but we still have to come to the Court?

THE COURT: No, but the business of coming to the Court is basically only where there is controversy.

MR. RYAN: That is correct.

THE COURT: Now, suppose they vote their 42 per cent and you vote your 37 per cent for, say, nine directors. That would be permissible under the charter and the by-laws of the stock issued and outstanding on September 4th.

MR. LIMAN: Your Honor, I understood, maybe I am -- we are here to talk about the form of the judgment, obviously, not to re-argue, and I guess that I now share Mr. Ryan's confusion on this point because since your Honor uses the conjunctive "and unless otherwise ordered by the Court" I would take it to mean that if, for example, a two-third vote was required in September 1969 --

THE COURT: You think it should be more?

MR. LIMAN: If that's what your Honor meant. I mean, it's really if your Honor means that we can act in accordance with the charter in 1969 without court approval, but if we try to do something that is not in accordance with the charter in 1969, we need court approval,

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2 then I think it should be a conjunctive.

3 THE COURT: Basically --

4 MR. LIMAN: Disjunctive.

5 THE COURT: Basically what I was trying to say  
6 was that I am not prepared to give -- to confiscate  
7 the 14 per cent of the shares, although I am prepared  
8 to suspend the vote of those shares, and if a majority  
9 of the stock of Piper decided to expand the capital of  
10 the corporation, I see no reason why I should step in,  
11 a majority of the outstanding and authorized shares.

12 And that's the reason why I put the fact that  
13 I am not confiscating the shares by this order.

14 MR. RYAN: In other words, you would include  
15 in the outstanding the 231,000 shares.

16 THE COURT: Definitely. But they couldn't be  
17 voted.

18 MR. RYAN: Yes, that's correct.

19 THE COURT: It may very well be, Mr. Liman and  
20 Mr. Ryan, that what --

21 MR. RYAN: Pardon me, your Honor.

22 THE COURT: I say it may very well be that this  
23 matter ought not be decided on horseback, but you ought  
24 to get your experts or corporate practice thinking through  
25 all of the permutations and combinations, and then see

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how you can meet what I am intending to do. I want to freeze the vote but I am not confiscating the capital.

MR. LIMAN: I think perhaps, your Honor, that where you now say, "And stock issued and outstanding" what is meant is that except in accordance with Piper's charter and by-laws as of September 1969 and with the laws of Pennsylvania and treating as outstanding the aforementioned 231,002 shares --"

THE COURT: Just a moment, after Pennsylvania?

MR. LIMAN: I would strike, "stock issued and outstanding."

THE COURT: Read it.

MR. LIMAN: Paragraph 3.

THE COURT: Read it slowly as you would rewrite it.

MR. LIMAN: I am following your language, "except in accordance with Piper's charter, by-laws," strike "and stock issued and outstanding, as on September 4, 1969, and with the laws of Pennsylvania, and treating as outstanding the aforesaid 231,002 shares," and then I would strike, just because it would read better, "Unless otherwise ordered by the Court." Move that down to the end.

In other words, no stock, et cetera, et cetera, and then at the end, but, "Unless otherwise ordered by

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2 the Court."

3 Do you follow my suggestion, your Honor?

4 THE COURT: Yes.

5 I think that clarifies it.

6 MR. LIMAN: I think that's what your Honor  
7 intended.

8 THE COURT: Yes.

9 Let's take these paragraph by paragraph and then  
10 I am going to give you all an opportunity over the weekend  
11 to do some thinking about it, about the whole thing, and  
12 see the extent to which my draft changes the respective  
13 proposals and whether number one, it is clear and two,  
14 it is necessary to carry out the intent, or can be  
15 shortened in some way.

16 MR. ARNING: Arning, Sullivan and Cromwell.  
17 Your Honor, Do I understand it is your intent in this para-  
18 graph to allow stock to be issued, additional shares up  
19 to the amount authorized at September 4, '60, without  
20 coming back to the Court?

21 THE COURT: No. I thought that it would be  
22 inappropriate to allow any dilution, and the addition of  
23 authorized shares to the outstanding would be a form that  
24 an insider could utilize to dilute something.

25 Now, actually, that might result in reducing the

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42 per cent, but even there I don't want it to go up or down that way.

MR. ARNING: Then it is your intention that it be in the conjunctive, that both in compliance with the laws of Pennsylvania and approved by an order of the Court before any additional shares are issued; is that correct?

I believe Mr. Liman's revision would change that so that it would be required to be one or the other.

THE COURT: Where was that in my draft?

MR. ARNING: The same paragraph we are working on, your Honor, paragraph 3 as revised by Mr. Liman's suggestion would be sufficient that it be in compliance with the charter and that would allow the board of directors to issue any authorized or unissued shares.

THE COURT: I see by moving that phrase down I don't take account of treasury stock, so to speak, do I?

MR. ARNING: Authorized but unissued shares, that's right. The authorization of additional shares, as long as the law of Pennsylvania remains as it is, at any rate, I guess would be all right, but up to the amount authorized, that can be done without court approval.

THE COURT: All right, I will just have to rethink

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2 that one in the light of this. You see, that's the kind  
3 of thing that I may not be thinking of all the combinations  
4 and permutations, and I'd like to have each of you think  
5 out what the implications are so that at least the result  
6 will express what I intended to express hopefully without  
7 any reference back to me now or whenever the Court of  
8 Appeals speaks.

9 MR. LIMAN: Your Honor, so that I am clear  
10 on this point, as I understand it, that if the board of  
11 directors were to vote to issue stock to an employee,  
12 that would not be permissible even if there was no disagree-  
13 ment among the directors unless your Honor approves,  
14 because that's what -- that's Mr. Arning's point, as I  
15 understand it, at least in part, that if your Honor means  
16 that there shall be no shares issued without Court  
17 approval, then he is quite correct, that the way to  
18 express this is to put it in the conjunctive and he can,  
19 I am sure, supply language or one of us can.

20 THE COURT: Let me tell you this, and I want  
21 to rethink this, but my horseback thought about it is,  
22 I want you to have everything that you have or that you  
23 can buy, but nothing that you can take by corporate  
24 readjustments.

25 I don't see how this employee incentive  
thing has anything to do with what I am intending. I hadn't

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thought about it, frankly, and that's one of the reasons why I want this to lay over until Monday to get all of these various ideas and counterproposals. It seems to me that the footnote in the opinion expresses more nearly what I wanted to tell you.

MR. LIMAN: Which footnote?

THE COURT: Footnote 21.

MR. LIMAN: Your Honor, just so there is no misunderstanding on that, as I understand the computations, that if the by-laws must revert to 1969, the by-laws and the articles, Chris Craft will not have management control, the board will be split 4-4.

Now, your Honor, let me just finish this. There is a computation that was done for Piper's registration statement by Piper's independent counsel and my understanding is that if either 1,000 or 1,500 shares of the wildcat shares don't vote, and we send you by letter what the number is or if 1,000 or 1,500 shares vote for Bangor Punta nominees, they get the fourth director.

As things presently stand, they are in control of the proxy machinery anyway. I can give you those numbers because if it was your intent, your Honor, that Chris Craft have management control, then reverting Piper to the 1969 by-laws makes it impossible, and while

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we take exception to the restrictions on the injunction, I think that when the appeal is heard, and I understand there will be a cross appeal, we ought to be appealing from what your Honor meant and not really from something which because we didn't understand it correctly, wasn't translated into the judgment, and if perhaps over the weekend we sent you the numbers and we either met again next week or sent in our comments, it would frame a judgment that carried out precisely your intent.

THE COURT: Let me, for your guidance in preparing that letter, say this: As I visualize the situation, and I am trying to roll back the affair to the 42%-37% position, under the voting purposes only, because that's the only mandate that I have, voting, not confiscation, not resolicitation, not anything else, only voting. Now, if that voting -- if that outstanding and voting formula, configuration, under your present stock ownership allows you to elect a majority of the board, that's what happens.

If it doesn't, you will have to gain your strength from the public as you would have in 1969, the same way with the other side.

Now, I don't know if there are enough outstanding shares, I haven't got it clear in mind, to know whether there was 24 per cent outstanding so that if they sweep --

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it can't be 14 per cent outstanding.

MR. LIMAN: All they need is, as I said, either 1,000-odd shares not voting or voting for them, but whatever the precise figure is, it has been computed, I can give it to your Honor in a letter and then your Honor can resolve it in accord with your intent.

THE COURT: The intent is to put everybody in the status quo ante and to go on from there, except for the one thing that the mandate directed me to do, to suspend the vote on the shares, the 14 per cent shares. From there on you help me and the other side can help me with each of the permutations and combinations that that results in.

MR. LIMAN: In 1969, in September, Piper had an eight-man board, even though it could be changed. assume that's what your Honor is freezing.

THE COURT: That's right, eight-man board cumulative voting.

MR. LIMAN: One other point, your Honor, so that we can at least focus on what the issues are, the Bangor Punta counteroffer runs the injunction against dilution and corporate action against Bangor Punta and Chris Craft.

It is their formal way of translating your Honor's

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2 decision. Without getting into a reargument of  
3 your Honor's decision, I take exception to their formal  
4 way of doing it. My client is a licensee of public  
5 telecast licenses and I think it particularly inappropriate  
6 to have an injunction run against it in form. That's  
7 in their proposed -- it's not in your Honor's, it is in  
8 their proposed counterjudgment.

9 THE COURT: Then what they will have to do is  
10 press on why my proposal is wrong. I am going to operate  
11 from mine except to the extent it has to be revised.

12 MR. RYAN: I think then just the ministerial act  
13 of rolling back the by-laws back to the September of 1960,  
14 the only way you can do that really is by operating  
15 upon the two principals, Bangor Punta, Chris Craft, have  
16 to have their designees take the necessary corporate  
17 act which is normally done in the form of an injunction.  
18 That's why I put it that way.

19 THE COURT: That raises this point. Should there  
20 be an immediate election ordered?

21 MR. LILIAN: Well, I think your Honor, Mr. Ryan --  
22 I asked Mr. Ryan out in the hall whether he agrees to  
23 a stay pending an appeal. He told me he had no objection  
24 to it. I think that there ought to be. As soon as the  
25 judgment becomes final, these provisions should be implemented.

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2       and they should be implemented obviously by an election.

3       I don't know whether your Honor has to put that in the  
4       order. It seems to me that you can rely on the self-  
5       interest of the parties here to proceed with an immediate  
6       election as soon as the question is settled by the final  
7       judgment.

8               THE COURT: I would think that in order, that  
9       there be a rollback and that there should be an election.

10              MR. LIMAN: By putting that right in the  
11       judgment.

12              THE COURT: I think that that's -- it occurred  
13       to me -- as a matter of fact I wrote it down upstairs  
14       when I saw this -- otherwise you are not going back to  
15       1969, because the election that was held in 1971 was  
16       what 14 per cent voted, so you have to undo that. That's  
17       something, again --

18              MR. LIMAN: If that is so, your Honor, may I  
19       suggest that your injunction should then run from the  
20       effective date of the election than from the date of the --

21              THE COURT: Suppose you take three years to go to  
22       the Supreme Court.           That means that the five years  
23       begin to run three years from now?

24              MR. LIMAN: We are prepared to go on an expedited  
25       appeal and your Honor could condition a stay on that

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2 basis.

3 THE COURT: My view on that is that when I get  
4 through with this, I want the five years to run and if  
5 you upend the decision, you will have to get the relief  
6 about that operation on an appeal, otherwise the five years,  
7 added to the five years already run, plus the gap of  
8 an appeal, and I am conscious of what immediate appeals  
9 mean in this circuit and in the Supreme Court, would extend  
10 this thing beyond the term that I have in mind.

11 MR. LIMAN: Your Honor, may I just make my point  
12 clear.

13 First, what would happen if your Honor doesn't  
14 grant the stay is that the time on appeal would  
15 count against us; secondly, if we then go through an  
16 election and a reduction of a board --

17 THE COURT: Why shouldn't the time on appeal  
18 count against you unless the Court of Appeals say to the  
19 contrary?

20 MR. LIMAN: The Court of Appeals might give us  
21 a stay but I think the District Court has discretion to.  
22 Here is a matter where we went into court five years ago,  
23 we have not been undiligent in the pursuit of our rights,  
24 all that we want, your Honor, is the opportunity to appeal  
25 and have our point of view on the injunction and damages

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2       heard and it seems to me that your Honor, if it were to  
3       take six months or nine months, given the time that has  
4       elapsed --

5               THE COURT: Suppose it takes two years?

6               MR. LIMAN: Your Honor, the Court of Appeals --

7               THE COURT: Suppose it takes two years?

8               MR. LIMAN: Then I think they could come in and  
9       ask that the stay be vacated, your Honor. It is just  
10      that if Bangor Punta wants to cut us off --

11              THE COURT: What happens if five years run?

12              MR. LIMAN: The five years would run from the  
13      time the judgment is final. Alternatively we would be  
14      going to an eight-man board, if the Court of Appeals  
15      agrees with us not just on damages but on injunction,  
16      then Piper would have to make another chance and I  
17      really question as to whether or not the way to bring  
18      stability to Piper is to proceed on the assumption  
19      that there is going to be no appeal insofar as I know.  
20      there are going to be cross appeals here, and when I  
21      really think your Honor, given the stakes of this contro-  
22      versy, we could all live with a stay knowing that if  
23      there was delay, the stay could be terminated. That's  
24      my position.

25              MR. RYAN: I would object to any stay which

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2 stops the time of this decree running. We have already  
3 been effectively enjoined for over five and a half years  
4 and we are not asking for a stay. We would oppose  
5 a stay if it is going to stay the running of the five  
6 years.

7 THE COURT: What about the insertion -- I just  
8 want to get your position. I am not deciding Mr. Liman's  
9 point. That's one of the additional things he will mention  
10 in his letter as to what I should do about my form of  
11 judgment.

12 What about ordering an immediate election to  
13 implement the terms of this decree? You see, if there is  
14 going to be a stay application made, I would assume that the  
15 stay application would also say, stay the election.

16 Now, that would mean -- it seems to me that would  
17 operate in reverse because if they want to stay the  
18 election, they are staying the time in which they get  
19 in.

20 MR. RYAN: I would -- my reaction is, your Honor,  
21 I would have no objection to going ahead with the  
22 election now if such is required, but I would like to  
23 speak with my clients before that. I would address myself  
24 to that.

25 THE COURT: You refer to that also in your response.

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2 MR. LIMAN: Mr. Ryan says that-- he talks about  
3 it being five years already. The board is ten, they  
4 picked the number, they picked the various designees  
5 attributable to them. Why all of a sudden is it now hurry  
6 up on their part to count time on an appeal against us?  
7 Up to now during appeals they felt no inhibition about  
8 changing the numbers of directors and I would really  
9 earnestly entreat your Honor to give us that stay.

10 THE COURT: I am not deciding now. You made your  
11 point.

12 MR. ARNING: I would like to make a suggestion as a  
13 corporate solution, rather than order a stockholders election,  
14 which would require filing of proxy material and passages  
15 of a similar period of time of a complicated proxy  
16 statement perhaps the board here can settle its membership  
17 by having resignations and then elections by the directors  
18 and it might simplify and expedite matters.

19 THE COURT: All right, would you spell that  
20 out and see how that works and how it works fairly to  
21 each side?

22 MR. ARNING: Yes, your Honor.

23 THE COURT: As an alternative to ordering a  
24 stockholder election.

25 MR. LIMAN: Your Honor, I wanted to just say

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say finally on the issue of damages just maybe to clarify there have been three propositions put before your Honor. One is that your Honor should use the usury rate.

Two, that your Honor should use the New York State local rate; and three, the new proposition, that your Honor should use 6 per cent rather than the seven and a half local rate. Once your Honor decides on the issue, we will agree among ourselves on the computation, the computation that I submitted to you was based on a 360 day calculation which is clearly not correct, I recognize that, and we will agree on what the number is once your Honor rules that it is strictly an issue of law at this point.

THE COURT: I haven't decided it in my own mind but I will tell you I spent three weeks looking up interest problems not only because of this case but because it happened to come up in another case too.

Initially, I was thinking in terms of a straight interest rate as Judge Weinfeld put it down in Austrian versus Williams but that was before the statute was amended in New York in 1967, I believe it was.

Then I took out the percentage and put down the legal rate. I am not sure that -- the legal rate I was talking about was the legal rate up to December '72 and

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as amended since that time.

MR. LIMAN: I thought your Honor meant that.

THE COURT: That's why I took out percentage.

The difficulty with your submission in your letter is that you have shaken me by this discretionary suggestion, and I am just wondering whether I want to backtrack at the present time, because reading, rereading my instant opinion, one would get the impression, until you get to the last page, that there wasn't going to be any interest. And then I decided that -- that I was second-guessing the Court of Appeals.

I may have second-guessed them incorrectly by talking about the legal rate.

MR. LIMAN: Mermelstein I think was probably the last case that I am aware of in which they discussed interest. That was a diversity case and there they applied the local rate. If you are governed by the diversity rate it is the local rate --

THE COURT: I just think that the business of interests has gotten off the track in the federal question cases without anybody really researching it.

Now the question is whether the path has developed to such a degree that we are really on to the state

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23

2 interest rate in these federal cases. That's the long  
3 and short of it.

4 MR. LIMAN: And when your Honor resolves it,  
5 you rule, we will agree among ourselves on what the  
6 figure is so your Honor can insert it and you don't have  
7 to trouble your clerk with the computation.

8 THE COURT: Let me ask you this question, Mr.  
9 Ryan. Why shouldn't the New York rate apply here to this  
10 case?

11 MR. RYAN: Well, this, your Honor is not a  
12 diversity case. This is the federal case.

13 THE COURT: I know it is a federal question  
14 case, not a diversity case, but the Court of Appeals said  
15 you were to be stung. Why shouldn't you be stung?

16 MR. RYAN: We have been stung, Judge, rather  
17 heavily, and the interest, as Mr. Arning is better prepared  
18 than I to discuss, we believe that even under the New  
19 York rule the interest should be six per cent. I will  
20 let Mr. Arning address himself to that.

21 MR. ARNING: Your Honor, we refer in our letter  
22 to a report of the Law Revision Commission.

23 THE COURT: What letter?

24 MR. ARNING: The letter that we handed you a  
25 copy of at the start of the proceeding. Which we submit

1 makes it perfectly clear that the New York State intended  
2 the legal rate to be six per cent all the time. It followed  
3 the usury rates in 134 decisions which was regarded as  
4 erroneous, and that's the reason they changed the law  
5 back in '72 to make the rate clearly six per cent. And  
6 I would like to state for the record that in dealing  
7 with the computation of interest we don't intend to  
8 concede that the award of prejudgment interest is correct.  
9 We intended to preserve that point.  
10

11 THE COURT: That's a different subject.

12 MR. LIMAN: Your Honor, I think that the New  
13 York cases which we can cite in your letter are clear  
14 that the amendment was not retroactive.

15 THE COURT: That's very clear, too.

16 THE COURT: There Arning is making a different  
17 point. He said it was never seven and a half per cent  
18 and therefore it not being retroactive it was always six  
19 per cent.

20 MR. LIMAN: I understand what he is saying.

21 THE COURT: All right, what else have we? Have  
22 we covered all of the things that -- the thing that I am  
23 most anxious to get help on is from the corporate lawyers,  
24 preferably those who know something about Pennsylvania  
25 corporate law, as to whether the language that's been

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used in respect of the corporate setup, is suitable and clear within the purposes of the decree?

MR. LIMAN: Could I suggest, your Honor, that the corporate lawyers, Piper has some, who work on the language, and we will too, give your Honor alternatives so that on the matter that your Honor just said that you had not --

THE COURT: Very useful.

MR. LIMAN: Thank you.

THE COURT: Very useful.

All right, now, is there anything else on this to deal with? All right, I will then wait to hear from you gentlemen and you needn't show any new notices of settlement, but why don't you agree on alternatives of statement within the framework of what has been indicated here, and then I will pick one or the other and I will type up the decree.

MR. LIMAN: Thank you, your Honor.

(Adjourned.)

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A I would consider them completely unmarketable.

THE COURT: You mean you couldn't have a secondary under any circumstances and that your firm wouldn't undertake it?

THE WITNESS: I think it would be terribly, terribly difficult, because it is a forced merger -- you said that they could force a merger.

MR. LIMAN: With the right of appraisal.

THE WITNESS: With the right of appraisal.

I think it would be very difficult. Maybe I shouldn't say practically unmarketable, but very difficult.

Q Have you --

THE COURT: What does that mean, as a result of your experience? You have had a very broad experience, where you have dealt with minority positions in the past, I assume, is that correct?

THE WITNESS: Yes, Judge.

THE COURT: How would you deal with this minority position if your client came to you and said, "I want to cash in"?

THE WITNESS: Well, does the fact of what was going to happen in the industry have any bearing on this matter, your Honor?

1  
2 THE COURT: You tell me.

3 THE WITNESS: Well, the industry was starting  
4 to go downhill very quickly.

5 THE COURT: That has nothing to do with the  
6 49 per cent position. That has got something to do  
7 with the 51 and the 49, isn't that right?

8 THE WITNESS: Well, the fact -- you are talking  
9 about doing a secondary, knowing that there has been a  
10 forced merger, so the client, the buyer wouldn't really  
11 be buying Piper; he would be buying Bangor, and therefore  
12 I would think that Chris-Craft's position would be at the  
13 mercy of Bangor.

14 THE COURT: Well, that has to do with price,  
15 doesn't it?

16 THE WITNESS: Well, it has to do with price,  
17 and it is a completely different business. I mean,  
18 Piper is an aircraft company and one of three aircraft  
19 companies in the United States, private aircraft com-  
20 panies, and Bangor is something entirely different.

21 MR. ARNING: Your Honor, the assumption started  
22 out on a theoretical possibility of closing a merger and  
23 the witness now seems to be saying that the merger is now  
24 announced or under way in some fashion.

25 MR. LIMAN: My assumption is that they have the

power to cause the merger, but they haven't caused it, or they haven't set the terms for the merger.

THE COURT: What the lawyers are saying, Mr. Burnham, is that somewhere in the corporate structure or of the corporate laws of Pennsylvania there is this reserved right.

Nobody has thought about it or done anything about it or announced that they are going to do anything about it, but a client comes to you and you know about it, because your investment department looks it up and says:

"Here's something that lurks in the background," and somebody says to you, "I want to market the stock."

Are you saying to me that you can't for a price market that stock?

THE WITNESS: Well, I can't give you a very direct answer. I guess, certainly under circumstances, you can market practically anything of any company that has some sort of size, but the price might be so unattractive that no one would consider it in his right mind.

THE COURT: We haven't at the moment argued with you about price or considered whether it is a higher price or a lower price.

1 The question that was put to you was strictly  
2 marketability. You made the flat statement initially  
3 that it wasn't marketable or would be marketable only  
4 with extreme difficulty.  
5

6 Now I am asking you --

7 THE WITNESS: May I tell the Judge why I say  
8 that?

9 THE COURT: Yes.

10 THE WITNESS: Because we gave some consideration  
11 to how they might get out of that position without asking  
12 them, and we considered it, what is a minority position  
13 worth in Piper Aircraft.

14 And we considered that it was most unattractive.  
15 We didn't think that much could be done.

16 THE COURT: You mean unattractive in the sense  
17 that Burnham & Company couldn't make money?

18 THE WITNESS: Unattractive in the sense  
19 that (a) one would have to have assurances before doing  
20 so that it wasn't going to be merged into Bangor, that it  
21 was going to be Piper Aircraft that you are selling, your  
22 Honor.

23 THE COURT: I assume that --

24 THE WITNESS: If you had that assurance, then  
25 the position is different.

BY MR. LIMAN:

Q And if you didn't have that assurance?

A If you didn't have that assurance, then I go back to my original statement.

Q And --

THE COURT: Now the way you get the assurance is to ask.

THE WITNESS: That's correct.

THE COURT: Now let's make the assumption that you ask, and you get an answer, "We are not going to merge."

Now what was your position as to marketability at a price?

THE WITNESS: Then you are in a much better position as to marketability because then you are offering the public a security that is well known, not complicated, possibly depressed due to economic conditions, but something that was listed and could be relisted, and you could go on, and you would have a marketable situation.

But the way the question was originally asked, without that permission, you would have a very difficult --

THE COURT: The question as originally asked

1  
2 didn't assume that you did or you didn't have it, but  
3 you have said that one of the things that you would  
4 require, as a prudent banker, would be to make an inquiry  
5 and get an affirmative answer to the fact that there is  
6 no such contemplation.

7 THE WITNESS: I would want -- I would want --  
8 I would want an undertaking.

9 THE COURT: Well --

10 THE WITNESS: I would want a firm undertaking.  
11 If that was given, that there would never be that, that  
12 in effect the Piper would go on as it had in the past  
13 and that 42 per cent would be the public market, that  
14 would be an undertaking. It would have to be a very  
15 firm one.

16 THE COURT: But there is no question about  
17 marketability under those circumstances, is there?

18 THE WITNESS: Under those circumstances, the  
19 only question about marketability would be price.

20 THE COURT: And that?

21 THE WITNESS: The price and business conditions.

22 BY MR. LIMAN:

23 Q And without those undertakings --

24 A Without those undertakings, I have said that  
25 the thing would be extremely difficult, relatively

unattractive to a buyer, because in that case you are practically dealing with -- not with the public but with a corporate buyer, who would be in the same position as Chris-Craft is.

Q Mr. Burnham, you testified that you owned Chris-Craft stock, to the best of your recollection, in January of '69.

Do you still own it?

A No.

Q And what was the occasion of your sale?

MR. RYAN: Objection.

MR. PENNOYER: I join.

THE COURT: Well, 'do this witness' personal speculations enter into this?

MR. LIMAN: I think so, your Honor, but to avoid colloquy in the presence of the witness on this, if you will take it subject to a motion to strike --

THE COURT: All right.

Q What caused you to sell?

A Well, I sold, and we sold the firm's shares, because we envisioned that -- a fight, and a very bad -- what we thought was a very bad situation. So we got out.

Q And when was that?

A To the best of my recollection, we started around August of --- August or September of '69. I haven't looked it up.

Q Was it after Chris-Craft got into its minority position, after Bangor was in the majority?

A Yes.

MR.LIMAN: I have no further questions of this witness.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. PENNOYER:

Q Mr. Burnham, I think you testified that you became aware of Chris-Craft's cash tender offer. Do you recall the date that you became aware of that offer?

A I am sure I only became aware when these things were released to the Dow Jones ticker. I had no banking connections with Chris-Craft, no inside information. I knew these things when I read them.

Q Well, it is agreed in this case that January 23rd is the date that the cash tender offer was announced, so I will ask you to assume that date, and I believe your testimony is that Mr. Gordon first called you about the possibility of getting money on January 30th, is that correct?



minority holder, and then the question that the judge asked me.

Q Let me ask you, sir, at the time that Chris-Craft had 42 per cent of the stock and Bangor 45 per cent of the stock, would you say at that time that Chris-Craft's Piper stock was marketable?

A That is a very difficult question. I don't think that in that kind of a situation, with a battle going on the way it was then, that I could render a very useful opinion on the marketability of Bangor shares or Chris-Craft at that time. Anybody else coming into the picture would want to know what was going to happen before they would risk anything.

Q In otherwords, the fact that it was still a contest for control going on is a factor which makes your answer a difficult one?

A Well, frequently you can control companies with much less than 45 or 42 per cent. This was a fight for control and it is a different condition.

MR. PENNOYER: I have no further questions at this time.

CROSS-EXAMINATION

BY MR. RYAN:

Q Mr. Burnham, could you tell us what you mean by

\* \* \*

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2 Q Are you familiar with the term?

3 A Yes.

4 Q What does it mean to you?

5 A It means that if you dissent, you have the right  
6 to go to an appraiser.

7 Q And you get the fair value of your security, is  
8 that correct? Is that your understanding of it?

9 A Some people don't always think they come up  
10 with a fair value.

11 Q But they are, under the statute -- is it your  
12 understanding that under the statute the appraiser is ob-  
13 ligated to give him the fair value of the security if the  
14 dissenting stockholder objects?

15 A It depends on what that fair value turns out to  
16 be. I mean, very frequently sometimes it relates to market  
17 value consider fair value, sometimes it relates to book  
18 values.

19 Q Mr. Burnham, if a security such as Piper Air-  
20 craft Company, which you testified before was listed and  
21 probably will be listed again and had a market on the New  
22 York Stock Exchange, would it be your opinion that a dis-  
23 senting shareholder would probably get substantially what  
24 the market value was on the date he files his dissent?

25 MR. LIMAN: From an appraiser?

MR. RYAN: From an appraiser.

A A dissenting shareholder of a huge block like Chris-Craft?

Q Well, now, I didn't say a dissenting shareholder. I said --

A You are talking about Chris-Craft's Piper holdings and now you are talking about the dissent of a 42 per cent holder.

Q We will assume first you sell the whole block to one shareholder.

Now, is there any question in your mind that that shareholder wouldn't get the fair market value for his stock if he dissented?

A I am not a lawyer nor running a court --

THE COURT: How many appraisal proceedings has your firm been in in the last 20 years?

THE WITNESS: Very few, your Honor.

THE COURT: Haven't you been in enough appraisal proceedings to know what goes on in an appraisal, considering your position in the banking field?

THE WITNESS: The general advice we hear in these matters is not to go for appraisals.

THE COURT: When you have gone for appraisals you know what the ropes are, don't you?

1 THE WITNESS: Well, my understanding is that the  
2 courts generally take as guidance market value. That is  
3 what I understand they base it on, but I would imagine in  
4 this question that the size of the block would -- anybody  
5 trying to get the fair value, he would have to judge it  
6 in some respect to the size of the block.

7 Q But he would get the fair value of the size of  
8 the block as found by the appraiser, wouldn't he?

9 MR. LIMAN: Objection.

10 THE COURT: He is inquiring of the expert opinion  
11 of the witness. This man is an outstanding man in the  
12 financial community and he ought to know the answers to these  
13 kinds of questions, Mr. Liman.

14 MR. LIMAN: He is asking what an appraiser would  
15 give Chris-Craft.

16 THE COURT: He is asking for an opinion.

17 THE WITNESS: I would assume if the law was  
18 followed he would get the fair value.

19 Q Mr. Burnham, why did you assume that there could  
20 be only one purchaser of the Piper shares owned by Chris-  
21 Craft in the event there was a sale of the Piper shares?

22 A I just felt, or feel, that a minority position  
23 without some guarantee that it stays as Piper becomes rela-  
24 tively unattractive for public offering. So then the  
25

market becomes maybe corporate buyers that want to buy in and they very seldom want to buy into something controlled by someone else.

Q Have you ever heard of any company which has securities which are traded on the market where more than 50 per cent is owned by one or a group of persons? That is not an unusual situation, is it?

A No, not at all.

Q And there is no reason why you could not make an offering of the Piper 41 per cent to the public at large at a price?

A It would depend upon what assurances one got from Bangor about what it was going to do about Piper. Otherwise, I don't think an underwriter would really know just what we was selling. He might sell Piper stock one day and then you said there would be an appraisal if you didn't like Bangor's offer, if they were going to make one, or he might be selling somebody an interest in Bangor that we would get down the road. That is why I said they would have to have an assurance they were underwriting Piper.

Q So it is your testimony that unless you had this assurance from Bangor Punta there would be no merger and under no circumstances could you sell this Chris-Craft block of Piper stock to the public? Is that your testi-

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mony?

A Under no circumstances would we do it. I don't say nobody else would.

Q There might be other firms on the street that would be willing to take this offer?

A That would be up to them. We wouldn't do it.

Q Directing your attention to the press release which Mr. Liman showed you, your testimony is you read that press release on May 8th or 9th, is that correct?

A Correct.

Q You didn't read that press release, you read something else?

A I read what was on the Dow-Jones.

Q You read the Dow-Jones and your testimony is that when you read the word "value" you said in your mind that this was market value, is that correct?

A Yes sir.

Q And your testimony is that the language "In the opinion of First Boston" had no meaning to you, is that correct?

A Very little.

Q Well, what meaning did it have to you?

A The only meaning it would have to me is that because I think First Boston is a very fine company they

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A Well, it could have been closed very quickly, in my opinion.

MR. ARNING: No further questions.

## REDIRECT EXAMINATION

BY MR. LIMAN:

Q Mr. Burnham, you mentioned the Brinks transaction, Brinks offering, in which you say your firm participated.

A We were an underwriter, not a managing underwriter. One of the underwriters.

Q Was that a case in which a minority stockholder was making a distribution of his minority stock?

A No. The hundred per cent owner of Brinks, Pittston, was making a public offering -- Brinks -- of the stock it owned. I think it indicated it sold 10 per cent. I don't know what the next offering was. They just had one.

Q Was this creating a market for the Brinks?

A Creating a market.

Q And it made more than one offering? It was letting out the stock?

A They made two so far.

Q And you differentiate that from a situation in which a stockholder such as Chris-Craft tries to make an offering where there is another company, Bangor Punta, that has 51 per cent?

A I did.

Q And could you explain, in your own words, why you think that Chris-Craft would find difficulties in doing this that do not exist in the Brinks case, for example?

A Well, as I said, in the Brinks case I feel that the buyers, the underwriters, investment trust, the public was satisfied that as a part of Pittston it was well run, had a fine record, and that they were sure that the parent will continue to control the subsidiary. They were very pleased with that. I think in the Chris-Craft case there is a fight on. There's ---

Q Assume the fight is not there, that they are trying to sell.

A Well, I felt, as I said, it's extremely difficult, unless the buyer is assured that he is buying Piper and that he's not buying something else, whether it be Bangor Punta or any other company.

MR. LIMAN: No further questions.

THE COURT: Thank you, Mr. Burnham.

THE WITNESS: Thank you, s'r.

(Witness excused.)

MR. LIMAN: The plaintiff calls C. Leonard Gordon.

(Discussion off the record.)

(Short recess.)



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1 Q Either one?

2 A Either one.

3 THE COURT: Would sell at what?

4 THE WITNESS: Excuse me?

5 THE COURT: At what price would you sell?

6 THE WITNESS: We would have to negotiate that.

7 THE COURT: What did you tell him?

8 THE WITNESS: I wanted to see whether we could  
9 arrange the financing and whether we could get the other  
10 side to agree --

11 THE COURT: Did you mention a price?

12 THE WITNESS: I don't believe so.

13 A (Continuing) I then through Mr. Baird -- Mr.  
14 Baird called me and told me that he was close to Mr. Wallace  
15 and that maybe he was also close to George Scharfenberg who  
16 was chairman of City Investing, and maybe City Investing  
17 through their insurance company subsidiary could arrange  
18 for some sort of settlement here through a buy or sell  
19 arrangement.

20 A meeting was held with Mr. Scharfenberg, Mr.  
21 Wallace myself, Mr. Baird and Mr. Gordon at Mr. Scharfenberg's  
22 office.

23 Q Was there a discussion there of your selling, of  
24 your buying, or anything like that?  
25

1  
2 A Yes.

3 Q Again the Court wants to know.

4 A Yes. We said we would either buy or sell.

5 THE COURT: Nobody asked you for what price?

6 THE WITNESS: Well, I mean, you had to be very  
7 careful, your Honor, because we were

8 THE COURT: I know you had to be careful.

9 Did anybody ask about price or was this just some  
10 vague generality, and how do you do and goodbye?

11 THE WITNESS: No, I think it was more specific than  
12 that.

13 THE COURT: Was it a specific business meeting for  
14 a specific business purpose?

15 THE WITNESS: Yes.

16 THE COURT: Was there any discussion at all as to  
17 what you were willing to do and at what price?

18 THE WITNESS: What we were willing to do was to  
19 sell out or to buy the other side if we could arrange the  
20 financing.

21 THE COURT: Didn't anybody think to ask price?

22 THE WITNESS: Yes. In the course of that con-  
23 versation I believe Mr. Wallace said that we would sell out  
24 at \$80 a share or they would consider all cash of \$80 a  
25 share.

1 THE COURT: What did you say?

2 THE WITNESS: I knew --

3 THE COURT: What did you say about your block?

4 THE WITNESS: We would sell on a more attractive  
5 basis.

6 THE COURT: What was that?

7 THE WITNESS: I think we would have -- I led them  
8 to believe that we would have sat down and negotiated more  
9 on a more attractive basis.

10 THE COURT: What is that, from zero to \$80?  
11 What is more attractive? What were you conveying to them?

12 THE WITNESS: They were talking of, I believe,  
13 all cash and we were talking in terms of maybe 25,000,000  
14 in cash and some sort of stock or some other securities.

15 THE COURT: What did that represent per share?

16 THE WITNESS: Well, I can't answer that, sir,  
17 because --

18 THE COURT: Nobody asked you?

19 THE WITNESS: No, it wasn't that. They weren't  
20 prepared to borrow the \$25,000,000 to do it.

21 BY MR. LIMAN:

22 Q Who wasn't prepared to borrow the \$25,000,000?

23 A Bangor.

24 Q Is it your testimony that it never got down to  
25

that point where you discussed price?

A At this point. There were meetings with Mr. Wallace which I offered to arrange the financing to have Bangor Punta buy us out.

Q At what price?

A I told him I would arrange for them to borrow \$25,000,000 on the stock and they would pay us \$25,000,000 in cash and they would pay us the balance in some sort of soft paper. If their stock ran up, we might get even up. It would be some formula that would allow them almost or more than two to one on the present price of stock before we would be even.

Q When Mr. Wallace said that he wanted \$80, did he say that what he wanted was his book and that was about \$80?

A Yes.

Q What did Scharfenberg say and what did you say?

A Well, I think it was sort of left, well, if you fellows can get together and you want my help, I will be glad to discuss it with you.

Q What happened next in your efforts to sell?

A I had a brilliant idea to call Charley Bludhorn, and seeing that he knew Mr. Salgo, whether he couldn't have Gulf & Western buy us out of our position in Piper,

and we'd buy some other position from Gulf & Western at a high price, and he would be able to then make a deal with Mr. Salgo.

Q What came of that?

A Charley told me that Salgo doesn't want to make a move with Piper and he's not interested in it and he can't do anything with Salgo.

Q Did you take any further initiatives to try to dispose of your position?

A Yes, I think Bludhorn did say that maybe if they made a deal, they would give us Commonwealth paper or some -- it was a whole complicated deal.

After that, after I was told that they couldn't do -- that Mr. Salgo wouldn't make a deal with him, I called Gerald Ruttenberg, I believe. Either he called me earlier or I called him. Mr. Ruttenberg I think is chairman of the finance committee of Studebaker. They own 60 or 70 -- I think it's 70 per cent of STP, which I thought maybe STP would buy both sides out.

Q Why did you ask him to buy both sides out?

A It was obvious. As you got into these discussions, right from the wording, nobody was going to buy 42 per cent if they are in a lawsuit, in a position of being merged out, and there was no way to sell your 42 per cent

unless you can deliver the 93 in one package.

Q So you called Mr. Ruttenberg.

Did you tell Mr. Wallace you were going to call Mr. Ruttenberg?

A No, I did not.

Q What happened with Ruttenberg?

A Nothing.

Q What further efforts did you make?

A I contacted Mr. Gurach, the chairman of INA, and had a meeting with him. I contacted him on the 8th, I believe it was, of October and we arranged to have a meeting in New York on December 12th.

Q This is '69?

A Yes. In between that time I had discussions with Mr. Salgo and I discussed with Mr. Cornelius Shields on November 5th. He arranged a meeting with Mr. Gott, the chairman of AMF.

Q Just with you or with Mr. Wallace?

A No, it was just with myself. I had to take this position. So you will understand, I had to take the position. If we could work out some arrangement, that we would be able to get Bangor to go along with it because if I said I can only sell you 42 per cent, you know, there was no reason for them to have a meeting. Then I had another call from Mr. Bludhorn and then there was a call which -- there was a

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1 call or a meeting with Howard Phillips, who I believe was  
2 then with Oppenheimer. I believe Len Gordon had that  
3 meeting. I was in it, part of it, in which he thought that  
4 both sides -- that he could probably arrange for both sides  
5 to sell out to some third party and that he had arranged  
6 these things before. <sup>We</sup>~~He~~ said go right ahead. Nothing  
7 happened from that.  
8

9 On December 5th I met with Phil Levin, and I  
10 believe Charley Bludhorn's call was that he would have Phil  
11 Levin to come over for -- in those days it was Transnation,  
12 that they might be interested in taking Piper. Again  
13 nothing could be warmed up enough to be able to get a firm  
14 offer out of them --

15 Q A firm offer of whom?

16 A Out of Transnation. I then met again with Mr.  
17 Salgo and I had another meeting with Mr. Levin on December  
18 11. Then on December 12th I met with Mr. Gurach, the chairman  
19 of INA, and I even went so far as to say that if you will  
20 loan us money on our stock, we will go and make the deal with  
21 Bangor and deliver the whole thing.

22 I then had a meeting on January 5, 1970, with  
23 Mr. James Miller, president of Blyth, in reference to Bendix.  
24 He was on the board of Bendix, to see whether William Bendix  
25 would buy Piper Aircraft, assuming we could get Bangor to go

1  
2 along. In <sup>none</sup> ~~one~~ of his negotiations with any of these sophis-  
3 ticated people involved would they ever consider buying 42  
4 per cent.

5 Q Did you ever offer it?

6 A Yes, but you couldn't with any sophisticated person  
7 without adjourning a meeting.  
8  
9  
10  
11  
12  
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2 On January 14th I telephoned Fred Sullivan,  
3 Ridde, and Murray Rosen, who is the president.

4 Q Would you spell it for the reporter.

5 A K-i-d-d-e, and arranged to meet with them to see  
6 whether we couldn't do something with them.

7 I then either called Mr. Evans or there was a  
8 call from Mr. Evans, the president of Grumman. I believe  
9 Len Gordon discussed that with Evans and we had the negotia-  
10 tions with Grumman at that point. That would be January  
11 14.

12 On March 13th Ralph Riener, who is a broker from  
13 California, came into New York. He had called prior. He  
14 came into New York and he said he thought he could get  
15 North American Rockwell to buy Piper. Those negotiations  
16 went on.

17 I then met with -- on May 1, 1970, I met with  
18 Orshan Saderkhan, who is the chief vice-president in  
19 charge of acquisitions I believe for Norton Simon.

20 Then on the 18th of June I had a meeting with  
21 Al Schwimmer, who was president of Israel Aircraft.  
22 There are more that have gone on since then, but I didn't  
23 have my have my 1970 book past that.

24 Q Did you ask your investment bankers to see if  
25 they could find a way for you to dispose of your position?

A Yes. Armond Erpf arranged to talk to Mitsubishi.

Q What about Sherill?

A I forgot what company Sherill talked to. I believe he talked to Johnny and Yelly. That's Fiat.

Q Have you received any offers at all for your block?

A Yes.

Q Mr. Siegel --

A Are you saying other than from Bangor Punta discussions?

Q Yes.

A The answer is no.

Q Have you told the people you saw that you wanted your cost back and that you wouldn't consider anything else?

A No.

Q What is the Piper investment costing you to carry each year?

A I would say over \$3,000,000 a year.

Q What does that comprise, the interest charges?

A The interest and no yield.

Q Have you tried everything that you can think of to dispose of this position?

MR. PENNOYER: Objection.

THE COURT: Sustained.

1 gwp

Siegel-direct

3182 A 470a

2 Q Are your investment bankers still on your board?

3 A No, they are not.

4 Q When did they leave it?

5 A They didn't stand for reelection in January.

6

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MR. LIMAN: In view of the uncontested findings and in order not to be cumulative, your Honor, I will ask no more questions, but the cross-examination can exceed the scope of the direct, your Honor, as far as I am concerned.

THE COURT: You refer to uncontested findings. I don't recall any uncontested findings being placed in this record.

MR. LIMAN: Your Honor, I reported to your clerk that we have made progress in going through about half of them. Mostly it is just a mechanical problem. There were various revisions, and we have to be sure that what your Honor has is the latest version.

But that is going to be completed -- basically, with a minor change here or there, the uncontested findings as your Honor has them are going to be admitted in evidence.

THE COURT: I have had no uncontested findings.

Now I want you to be perfectly clear that unless you put into this record the number of a finding that you are offering in evidence, there is no such thing as an uncontested finding in the record.

Get that clear, and it doesn't make any difference

pj-2

Siegel-direct

3184 A

how many times you talk to my clerks, or what else you do. I don't want any incorporation by reference. I want this record to be totally complete as to what this case is about.

MR. LIMAN: It will be, your Honor.

THE COURT: All right.

MR. LIMAN: As soon as we finish the marking process.

THE COURT: All right.

That means that in view of your prospective offer of certain findings in this record, you don't want to ask any more questions of this witness?

MR. LIMAN: And in view of the fact that there has been prior testimony, as I understand your Honor's procedure, you want us to keep cumulative testimony to a minimum.

I am proffering the witness now for cross-examination on such subjects as defense counsel feel appropriate.

THE COURT: Thank you.

Any cross-examination?

MR. PENNOYER: Could we have a short recess? I think I could shorten it up.

THE COURT: All right.

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## REDIRECT EXAMINATION

BY MR. LIMAN:

Q Mr. Siegel, you have testified earlier that you had recommended Beech stock to Mr. Sherill.

A Yes.

Q And at that time did you have some knowledge of the light aircraft industry?

A Yes.

Q And was that one of the industries that Mr. Rocklis was following?

A Yes.

Q And had you had discussions with Mr. Rocklis between the time that you recommended Beech to Sherill in '69, I think you said, and December 30th?

MR. PENNOYER: Objection.

THE COURT: Well, I will allow it.

I am just puzzled as to the indicated basis during the course of this trial as to how these vast sums come out of hiding and into investment or loans. I mean, it seems to not accord with any background of study that I ever had on the subject, and therefore I have to revise all my notions.

I just don't understand how you go out and buy

pj-2

Siegel--redirect

3186 A

1  
2 six million dollars worth of stock on the basis of the  
3 knowledge that the witness has testified that he had  
4 about this organization or how Mr. Burnham could get  
5 a \$22 million commitment from overseas on the basis of  
6 September, 1968, information available in January. But  
7 I suppose that seems to be what happened.  
8

9 THE WITNESS: Your Honor --

10 THE COURT: Yes, sir.

11 THE WITNESS: We did have approximately \$35  
12 million in excess cash. I mean, at that particular  
13 juncture.

14 BY MR. LIMAN:

15 Q Mr. Siegel, the question is not how much money  
16 you had but why you spent it and what you really knew  
17 about this company.

18 Now you had investments in other stocks during  
19 this period.

20 A That is correct.

21 Q Were you buying and selling? Was that your  
22 practice?

23 A No. We would buy, and if we felt the stock was  
24 a sell, and if it wasn't something that for one reason  
25 or another fit into a possible future acquisition, we would  
sell out --

1  
2 THE COURT: Isn't the real reason you made  
3 the investment here that you thought you could go into  
4 a situation and before February 4th be out of it?  
5

6 THE WITNESS: No, sir.

7 Q Mr. Siegel, you had Warner Bros., is that cor-  
8 rect?

9 A Yes, sir.

10 Q And you owned MGM?

11 A During -- yes.

12 Q And you owned Harley-Davidson.

13 A Yes, we did.

14 Q In all of these cases had you given some considera-  
15 tion to the possibility of a merger or a combination of  
16 your company with those companies?

17 MR. PENNOYER: Objection.

18 THE COURT: Overruled.

19 A Yes, we did.

20 Q And did you buy, during this period, stocks  
21 outside of the leisure-time field?

22 A No.

23 Q Were you in the business of stock market  
24 speculation?

25 A Absolutely not.

1  
2 Q And when you bought --

3 THE COURT: In the light of that last answer,  
4 is there any situation in the last several years that you  
5 have stepped into that you have stayed with for any period  
6 of time and haven't sold out?

7 THE WITNESS: Yes, sir. I would say that Chris-  
8 Craft is one.

9 THE COURT: Are there any others?

10 THE WITNESS: We don't do that many.

11 Q When you say you don't do that, you either get  
12 into the company or out?

13 A Yes.

14 Q And in the case of Piper, when you bought your  
15 first 5000 shares, did you know how many shares you would  
16 get at the next bid?

17 MR. PENNOVER: Objection.

18 THE COURT: Overruled.

19 A No.

20 Q Were you bidding above market at this time?

21 A No. What I would do is place a bid. I would  
22 ask the floor broker what is the bid and the asked.

23 THE COURT: Wouldn't you ask him the size of  
24 the market on either side of the bid?

25 THE WITNESS: Right.

1 mp

Wallace-direct

760

3189 A

2 THE WITNESS: That's right.

3 THE COURT: It is not the full list, it is just  
4 the changes.

5 MR. RYAN: The weekly transfer sheets, that is  
6 correct, sir.

7 THE COURT: The weekly changes.

8 Q Prior to your conversation with Mr. Milne did you  
9 have any discussions with anyone concerning these purchases?

10 A None whatsoever.

11 Q I will direct your attention, Mr. Wallace, to  
12 November, 1969. Do you recall attending a meeting of the  
13 executive committee of the board on or about November 4, 1969?

14 MR. LIMAN: Executive committee of what board?

15 MR. RYAN: Board of directors of Bangor Punta  
16 Corporation.

17 A I remember attending a meeting of the directors of  
18 Bangor Punta. It's never clear in my mind whether it is  
19 an executive committee meeting or a board meeting because  
20 we have a practice of inviting all the directors to attend  
21 executive committee meetings and it is merely an executive  
22 committee meeting for purposes of having a smaller quorum,  
23 but I know I was at a meeting of our directors, either a  
24 board or executive committee meeting at that time.

25 Q During the course of that meeting do you recall

any discussions concerning the accounting treatment of certain assets of the company?

A Yes, I do.

Q Would you please relate to us, to the best of your recollection, the substance of those discussions you had at that meeting?

A At that point we had sold the stock of the Bangor and Aroostook Railroad and generated a loss for the fiscal year ended September, 1969, and also the Piper situation had clarified -- clarified may be a bad word, but it had come to a point where we owned approximately 50. something per cent and Chris-Craft owned approximately 42 or 43. something per cent, and it was obvious to me that we would have to in some way treat with the Chris-Craft management because, in the long run, it wouldn't make sense for two companies to be pulling a third, you know -- we would have to buy out Chris-Craft or make some understanding with them.

Q These discussions you had at this point?

MR. LIMAN: You mean at the executive committee meeting?

MR. RYAN: Yes.

A Yes. This is the directors meeting.

Q This is the substance of the discussion?

A Yes. This was discussed then. I was also con-

putting up \$10 million to buy Piper stock?

MR. PENNOYER: Objection.

Q (Continuing) Did they report that to you?

MR. PENNOYER: Objection, your Honor, on the same grounds.

THE COURT: Overruled.

A Yes.

Q And, as a result, your discussions were discontinued?

A As a result I said I was leaving town, and if they got back to the conditions I had laid down, I would be glad to talk to them, but the time was, you know, moving along, and pretty soon nobody would be able to do anything, and I wasn't going to sit down until they were ready to come in.

Q Was it your understanding, Mr. Wallace, in these meetings that the Pipers were willing to consider Bangor Punta only in order to avoid Chris-Craft?

MR. PENNOYER: Objection.

THE COURT: Well, I think that you ought to put that question so that it does not forecast the answer.

Q Did you have an understanding as to the Pipers' purpose in talking to Bangor Punta?

A Their purpose in talking to us?

3192 A

Q Yes, sir.

A Yes.

Q What was it?

A For Piper to become part of Bangor Punta.

Q And did they tell you why they wanted to become part of Bangor Punta?

A Yes. They said that if they could not be an independent company and be off on their own, which they vastly preferred, then if they had to be affiliated with anybody or associated with anybody, they would prefer Bangor Punta.

Q And did they discuss Chris-Craft with you?

A Chris-Craft was mentioned, I am sure.

Q Did they express their views about Chris-Craft in your presence?

A That they would prefer us to Chris-Craft.

Q Is that all they said?

A I am sure they said more. I can't give you the exact wording, but they said more, I am sure.

Q Now who is Mr. Galle?

A Mr. Galle is senior vice president of finance of Bangor Punta.

Q And did you, prior to May 8, 1969, ask Mr. Galle to make any cash projections with respect to acquiring

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3193A

\$30, in the low 30's, am I correct?

A Whatever I said I am sure that is what it was.

Q Do you recall that was roughly the price in May?

A No, I have no recollection of the selling price of our stock on any particular day or at any particular time.

Q Were your warrants exercisable at \$55 a share?

A Correct.

Q And your convertible debenture was convertible at \$55 a share, is that correct?

A Not necessarily.

Q When you say not necessarily --

A Because all our convertible issues have what is known as an anti-dilution clause and I believe it may have been that it was convertible at 54.25 or something -- whatever it is, it is. It is a mechanical thing.

Q Approximately 55?

A Yes.

Q You also said yesterday, and then I will move away from yesterday's testimony, at page 857, referring

to your April 20 meeting with the Pipers, and I will direct your attention to that part of the answer that said:

"A As a result I said I was leaving town, and if they got back to the conditions I had laid down, I would be glad to talk to them, but the time was, you know, moving along, and pretty soon nobody would be able to do anything, and I wasn't going to sit down until they were ready to come in."

What did you mean by nobody would be able to do anything?

A Well, it was a great mystery to me why Chris-Craft had not moved more aggressively and I felt the more time that went by, the more the likelihood that there would be no interest on my part in coming into the situation because Chris-Craft would have acquired so much stock that it wouldn't be worth our while.

Q Referring to the May 8 press release, do you recall the recommendation of Mr. Piper that was contained on the second page (handing)?

A You mean this thing at the top?

Q Yes.

MR. LIMAN: This is finding 69, your Honor.

Q Why don't you read that.

Q When you say "going ahead" on May 21, 1969, you had already committed yourself to purchase the Fund of Funds block?

A Right. On May -- what?

Q May 21st, the date of this meeting.

A Whatever date you tell me I bought it, I bought it. I am not trying to be difficult. I just don't remember dates well.

Q And you had also, by May 21st, committed the company to enter into the agreement with the Piper family, the May 8th agreement, am I correct?

A Correct.

Q And you understood that under the May 8th agreement that you were required to use your best efforts to obtain 50 per cent of the stock of Piper?

A Absolutely correct.

Q And you understood as part of that agreement you were supposed to make an exchange offer to the public, am I correct?

A If it says that in the agreement, that's absolutely correct.

Q And what was it that you were trying to persuade your board to do with respect to Piper on May 21st that led you to make this statement to them?

1  
2 A To support, to move with vigor, et cetera.  
3 You know, this was something we wanted to accomplish,  
4 and you know, when you are in any kind of a battle you  
5 try to keep up the morale of the troops, and that's what  
6 I was doing.

7  
8 Q Now the minutes also contained the statement  
9 that Mr. Salgo pointed out that:

10 "In the event we are successful in gaining  
11 a majority interest in Piper Aircraft Corporation,  
12 we may possibly be able to arrange for the liquida-  
13 tion of Chris-Craft's position in Piper on an  
14 installment basis."

15 A Well --

16 Q Do you remember him saying that?

17 A I certainly do.

18 Q And he was talking about paying Chris-Craft on  
19 installments?

20 A We were to pay Chris-Craft in any way Chris-  
21 Craft would have taken. We made repeated efforts to buy  
22 out the Chris-Craft block.

23 Q Had you made any efforts before May 21st?

24 A Oh, excuse me. You are right, Mr. Linan.  
25 The earliest effort I remember was a meeting with Mr.  
Siegel in the summer. That was the earliest one I

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Wallace-cross

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remember.

Q And what was the installment basis that Mr. Salgo was talking about here?

A I think Mr. Salgo was probably figuring that there was some basis that could be worked out, paying so much a year.

That's a normal kind of a thing in an installment purchase.

Q Had you made any effort to acquire the Chris-Craft block before you laid out the money for the Fund of Funds purchase and for the purchases from Bay Securities and American Securities?

A I don't recall, and unless there is some way of refreshing my recollection, all I can say is I don't recall having done so.

Q And is it a fact that under your loan agreement with John Hancock you had the right to use some \$20 million for an approved acquisition?

A That's correct.

Q And is it a fact that you had used, through the acquisition of the Fund of Funds block and the blocks from Bay Securities and American Securities, almost ten million of that?

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Wallace-cross

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A About nine million dollars.

Q Now, Mr. Wallace, are you familiar with the provision in the May 8, 1969, agreement that provided in substance that in effect if you got more than 50 per cent of the stock and the Piper family offer was worth less than \$80, you would make up the difference to them?

I am paraphrasing it and don't accept my paraphrase. I am just directing your attention to the provision.

Are you familiar with that provision for an adjustment upward in the Piper family package?

A Without accepting all your characterization I recall such a provision. They called for an adjustment in the price in the event that Bangor Punta received more than 50 per cent, I think.

Now if that is --

Q That is in '66?

A Whatever the agreement says it is, it is.

Q There is litigation now between a member of the Piper family and Bangor Punta, and I don't want you to put an interpretation or characterization here.

A That's the Piper-Bowles litigation.

THE COURT: Gentlemen, never mind these considerations of delicacy. Now let's get on with the

Q I will show you Exhibit 80 for identification, which are copies of three letters from Mr. Jamonau to Mr. Nardone, enclosing certain certificates of Piper stock for payment by Bangor Punta. Would you look at them (handing).

A I see this. I know nothing about this transaction, but I know Mr. Nardone and he is treasurer of Bangor Punta Operations.

Q Today your counsel was good enough to bring me your diary, and is it a fact that it shows on July 29 a meeting with Chris-Craft?

A Yes. I want to apologize: when I got back to the office last night I checked with my secretary and she had found this diary, and it indicates on Tuesday, July 29, 1969, I have written in my own handwriting "Meeting with Chris-Craft."

Q You recall that that is the date that your exchange offer was scheduled to close?

A I recall, you know, based on what I have heard, that that is what it was. I really have no recollection of the connection there.

Q Were you aware that you had reserved the power in your exchange offer to extend it?

A On notice.

Q You say on notice; that is your interpretation of it?

A That is what I understood, yes.

Q Did somebody tell you that?

A It is in the exchange offer, I believe.

Q When you say it is in the exchange offer, you are referring to --

THE COURT: Mr. Liman, does the reason for the failure to extend the offer make the slightest bit of difference in this case on any issue?

MR. LIMAN: I think so, your Honor.

THE COURT: What difference does it make?

MR. LIMAN: I think it bears on the issue of the effort to freeze us in and out.

THE COURT: I consider that such a hopelessly remote speculation that it doesn't even warrant an inference in any direction.

MR. LIMAN: They offer a proposed finding, your Honor, that we had plenty of opportunity to get out with their exchange offer.

THE COURT: That speaks rapidly in another direction.

A This is the language I am referring to (indicating).

Q Under "Expiration Date"?

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Wallace-cross

3201A

968

A Yes, on page 6.

Q You read that as meaning that it wasn't 24 hours' notice of termination on an extension but that you had to give 24 hours' notice to extend?

A It means that if I decided to extend, before I extend I have to give 24 hours' notice.

Q That is the way you read it?

A Yes.

Q Do I understand that on July 29 you did not have 50 per cent of the stock of Piper?

A That's correct.

Q And you understood that your offer was subject to stockholder approval on August 7?

A That's correct.

Q And you understood that during that period between July 29 and August 7 you were not in a position to acquire other shares of Piper?

A I think that is correct. I know this: from the period of May 23, when we visited the SEC, we were making very sure that we did nothing without prior talking to the SEC.

Q Was it your decision you should not keep your exchange offer open until your shareholders approved it?

A That is correct, that was my decision.

\* \* \*

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A No, not necessarily.

Q Did you ever tell your lender, John Hancock, that time was in Bangor-Punta's favor as opposed to Chris-Craft's?

A You know, I was presented with a very serious problem with John Hancock because Chris-Craft went to Hancock and I then had to sort of soothe the ruffled feathers -- the Hancock is a very conservative group and they don't like to be involved in any kind of controversies, and so forth, and I think I probably told Hancock that, you know, that things would work out and just sit tight and not to get upset about things.

Q Chris-Craft had not gone to John Hancock by October of 1969, did it?

A I don't know when you went there. All I remember is it was a very traumatic experience for me, that is all.

Q If I show you Exhibit 81 for identification, would this refresh your recollection as to when you talked to John Hancock and what you told them (handing)?

A Whose file is this from?

Q From John Hancock's file.

A This is Mr. Monroe's file?

Q I believe so.

A May I read it now?

Q Sure.

(Pause.)

A This is all true.

Q When you say it is all true --

A I don't have any recollection of the time.

All I am saying is that that is the kind of thing I would have said.

MR. LIMAN: I will show you this and offer it in evidence after you have a chance to look at it at the lunch break, Mr. Ryan.

Q At your July 1, 1969 meeting of your board of directors did you state to the board, "Chris-Craft has an investment of about \$35 million plus expenses and that Chris-Craft has a demand loan for approximately \$15 million which we believe must be settled within the near future. This places us in a position where we must determine how much should be paid for Chris-Craft's interest and the form of payment. It would not appear appropriate for us to consider paying all cash for their Piper shares?"

Did you make those statements?

1 A This is all true, and I remember the circum-  
2 stances of this statement very well.

3 Q What did you have in mind when you told the  
4 board that Chris-Craft's demand loan had to be settled soon?

5 A What I had in mind was, and this goes back  
6 to Mr. Salgo's remarks about an installment sale, and various  
7 meetings I have had with Mr. Siegel and Mr. Gordon, that I  
8 thought it was unrealistic for us to think in terms of  
9 any settlement with Chris-Craft which didn't involve getting  
10 over to them enough money to cover their short-term  
11 indebtedness.

12 You know, Bangor Punta is not really the  
13 richest company in the world and we have a lot of debt  
14 ourselves and I was concerned that our board understands  
15 that we could not accomplish this unless we gave Chris-  
16 Craft some means of paying off their debt.

17 Q You were not waiting, were you, for Chris-  
18 Craft's lenders to call the loan?

19 A I wasn't waiting for it; I would have been  
20 delighted if they had.

21 Q Is it still your intention to merge Piper  
22 into Bangor Punta?

23 A There is a court order against it, or a  
24

25 \* \* \*

AFTERNOON SESSION 3205A

2.15 P.M.

MR. LIMAN: I offer Exhibits 79, 80 and 81 for identification.

MR. RYAN: No objection.

(Plaintiff's Exhibits 79, 80 and 81 for identification received in evidence.)

DANIEL WALLACE, resumed.

CROSS EXAMINATION CONTINUED

BY MR. LIMAN:

Q Mr. Wallace, you testified yesterday at page 829 in answer to some questions by Mr. Kushner as follows:

"Q And was there any reason that both you and Mr. Salgo didn't also handle the study committee to which Mr. Hutchins was appointed chairman?

"A I think there was a very good reason.

"Q What was that?

"A One, I think everybody knew Mr. Salgo's opinion, to begin with, and, two, I think everybody figured I was trying to preserve order in the house and not take a stand, one way or the other, until I had learned more."

Now, had Mr. Salgo expressed an opinion before the Hutchins Committee was appointed on the railroad?

A Yes.

3206 A

Q And what was his point of view on the railroad?

A Well, I believe that Mr. Salgo thought that a solution should be found for handling of the railroad, that it did not really fit into Bangor Punta's long-range plans.

Q So that is it fair to say that the difference between Mr. Salgo and Mr. Hutchins was not over whether Bangor should retain the railroad but rather on how it should divest itself of it?

A No. That's incorrect.

Q Well, in what way is it incorrect?

A There's all sorts of areas of difference, one of timing, one of manner, one of the consideration, one of the total consideration and so forth. I think on all these points there was divergence.

Q But you said that Mr. Salgo felt that the railroad did not fit into Bangor Punta's plans?

A I said, long-range plans. We had felt for some time that a solution should be reached, because maybe we would own the railroad for ten more years, twenty more years. We didn't know.

Q Depending on whether you found a buyer or were able to divest --

A No. Not depending on whether we found a buyer,

1 but depending on whether, all things being equal, the solution  
2 we found was of advantage to the stockholders.  
3

4 Q Well, did anybody at Bangor Punta, prior to the  
5 appointment of the Hutchins Committee, express the view that  
6 Bangor Punta should continue in the railroad business in-  
7 definitely?

8 A There was feeling that the railroad was a good,  
9 solid earner, in some quarters. I can't give you specifics  
10 at this point.

11 Q Well, who felt that way?

12 A At one point, Mr. Robertson felt the railroad was  
13 a very sound operation.

14 Q But Mr. Robertson was in favor of appointing the  
15 Hutchins Committee?

16 A The Hutchins Committee, as you understand, was  
17 originally appointed not to do anything but study Mr. Salgo's  
18 recommendations, which were raised at the meeting of April  
19 1st, I believe.

20 Q Now, you said that Mr. Salgo's opinion had been  
21 expressed before. Had Hutchins expressed an opinion on the  
22 railroad before he was appointed?

23 A Not that I recollect.

24 Q Was the fact that Mr. Hutchins was a friend of  
25 Dumaine known to you at the time this committee was appointed?

pp4

Wallace-cross

3208 A

1 A The fact that Mr. Hutchins was acquainted with  
2 Mr. Dumaine was known to me.  
3

4 Q And had Hutchins, before the appointment of the  
5 committee, ever expressed the view that Dumaine might be  
6 a buyer of the railroad?

7 A Before the appointment of the committee?

8 Q Yes, sir.

9 A I don't recollect that.

10 Q Now, you testified yesterday, also, at page 830,  
11 with reference to Exhibit No. 2 in this case, which is the  
12 unsigned letter from Mr. Hutchins to Mr. Dumaine. Are you  
13 familiar with the letter? I can find it here. Here it is  
14 (handing to witness).

15 A Yes. I recall that letter. I read it yesterday.

16 Q Right. And you said yesterday, "I don't know  
17 about this letter. I have subsequently learned about it,  
18 but at the time I did not know about it."

19 Now, when you say that you subsequently learned  
20 about it, when did you first learn about the letter?

21 A During the course of the investigation that the  
22 SEC conducted, I think during the summer of 1970. Wouldn't  
23 that be right: '70?

24 Q In other words, you learned about it after the sale  
25 of the railroad?

pp5

Wallace-cross

3209 A

1  
2 A Yes. I believe that's true.

3 Q Now, you have testified with reference to the May  
4 21st minutes, at page 820, the May 21, 1969, minutes. At  
5 page 820, you were shown the minutes and a \$7,000,000 figure  
6 reflected therein, and you said, "I don't think it was a very  
7 serious proposal, but I think it was made.

8 "Q On the part of Mr. Salgo?

9 "A No. I don't think Mr. Salgo was serious in this."

10 Do you remember giving that testimony?

11 A Yes; I did.

12 Q Was it the practice of Bangor Punta to circulate  
13 the minutes among the directors?

14 A To circulate the what?

15 Q The minutes.

16 A No. It's not the practice. The practice, subject  
17 to correction -- Mr. Martin, who is here and is secretary of  
18 the company -- but I think we give the directors a summary of  
19 the minutes, and then the minute book is open for their in-  
20 spection.

21 Q Well, my recollection --

22 A That was at their request, incidentally.

23 Q My recollection is that Mr. Flick testified that  
24 notes of the meetings are kept until the minutes are ap-  
25 proved.

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

2 A That's correct.

3 Q Has the practice changed since Mr. Flick was in  
4 charge of keeping the minutes?

5 A Not to my knowledge.

6 Q And are minutes read at meetings for approval?

7 A No. A typewritten summary of the minutes is  
8 submitted, with the understanding that the directors may  
9 inspect the minute book and the actual minutes, and then the  
10 minutes are approved on the basis of the summary.

11 Q Do you have a copy of the summary of the May 21st  
12 minutes?

13 A I don't know.

14 MR. RYAN: You mean, on his person? I will object  
15 to that question. Nobody has ever asked for them.

16 MR. LIMAN: We asked for all minutes.

17 MR. KUSHNER: Your Honor, there was a subpoena  
18 served in the Commission's investigation --

19 THE COURT: I don't know what all the excitement  
20 is about. Have you got it or haven't you got it?

21 MR. RYAN: I don't know. May I just check for a  
22 second?

23 Mr. Martin informs me, your Honor, that at the time  
24 Mr. Wallace is testifying about, in May of '60 the practice  
25 was to send the minutes around for approval. The present

3211 A

practice is to use the resumé.

THE WITNESS: Then I stand corrected.

MR. LIMAN: Thank you.

Q And was it also, then, the practice that if a director found that something did not record the substance of the meeting or what he meant, that the changes would be made?

A Certainly.

Q Do you know whether Mr. Salgo ever asked that these minutes be changed?

A It would be reflected in the minutes of the next meeting. I don't recall.

Q After this May 21st meeting, did Mr. Curtis Hutchins ever report to you that he had tried to get Dumaine to pay \$7,000,000 for the railroad but that Dumaine would not budge?

MR. PHAN: Your Honor, I am going to object to this whole line. Apparently Mr. Liman is going over the same area that Mr. Kashner went over yesterday. It is repetitive and cumulative, and I want to know how many times are we going to sit here through this kind of examination.

THE COURT: One more time.

MR. LIMAN: This question was not asked.

THE COURT: Overruled.

THE WITNESS: Could I have the question again?

THE COURT: Read the question.

(Question read.)

A I don't recall such a conversation.

Q Now, you testified that after you spoke to your accounting and tax people, the matter of disposition of the railroad was tabled for a considerable period of time. Do you recall testifying to that effect?

A I believe that occurred some time in June.

Q Were you told, Mr. Wallace, that in July Mr. Dumaine was given a tour of the Bangor and Aroostook Railroad?

A I don't recall. It may have happened. If it happened, it happened. There wasn't anything that I had to approve or disapprove.

Q If I show you the transcript at page 770, am I correct-- that there is an error in the transcribing here? Would you look at the answer that begins, "But I do recollect" --

A Could I read where it starts?

Q Sure. And if there is a change, would you please express it? It is page 770.

THE COURT: What line?

MR. LIMAN: I am pointing out to him line 11 and line 12.

\* \* \*

3213 A

wouldn't you?

MR. RYAN: Objection, your Honor.

THE COURT: Sustained.

MR. LIMAN: No further questions.

CROSS-EXAMINATION

BY MR. PENNOYER:

Q Did the Pipers agree with your view that there was a safety problem with the Twin Comanche?

A No, they did not.

MR. PENNOYER: NO further questions.

MR. RYAN: I have no questions, your Honor.

THE COURT: Mr. Kushner?

MR. KUSHNER: Your Honor, may I just have one moment? I just have one exhibit for identification and I don't believe there will be any objection to it.

THE COURT: Do you want this witness for anything?

MR. KUSHNER: Yes, sir, in case there is objection.

THE COURT: Well, what is the exhibit? Just describe it.

MR. KUSHNER: It is a page which was attached to the September 9 minutes which stated that the

meeting had been scheduled as an executive committee meeting.

MR. RYAN: I have no objection.

MR. KUSHNER: That is Exhibit 61 for identification (handing to Mr. Ryan).

MR. RYAN: I have no objection.

THE COURT: All right, thank you, you are excused.

(Witness excused.)

(Plaintiff's Exhibit 61 was received in evidence.)

THE COURT: Mr. Kushner, is there any significance to the fact that Exhibit 61 states what it says?

MR. KUSHNER: I think it is one inference, your Honor, that this issue of the railroad created a lot of interest among the Bangor Punta directors?

THE COURT: Is there anything that shows why the attendance after Labor Day was better than the attendance before Labor Day?

MR. KUSHNER: There is some testimony by Mr. Wallace on that, and perhaps we will get more, who knows.